

## CHAPTER ONE: SUDAN

*I was . . . a priest in South Africa detained under apartheid as a priest, fighting for black rights. South African apartheid at its worst is nothing compared to Sudan. Sudan is the hell of the world – there is no question about that – it is the hell of the world, and this suffering should not be allowed to continue.<sup>1</sup>*

*[In Sudan, there are] indiscriminate and deliberate aerial bombardments by government aircraft and rockets fired from gunships at civilians gathered around airstrips awaiting the distribution of relief or fleeing their villages . . . .<sup>2</sup>*

### A. Introduction: The Sudanese Government's "Policy of Terror"

On February 8, 2000, three weeks after the Sudanese government declared a cease-fire in its ongoing civil war, one of its planes dropped between three and six bombs on Comboni Primary School, a Catholic missionary school in the Nuba Mountains. The bombs immediately killed 14 children and a 22-year-old teacher. The survivors of the attack carried 18 wounded children, some with limbs blown off, to a nearby German medical facility, one of many such makeshift medical facilities operating in hazardous locations throughout Sudan. A videotape recorded the aftermath of the slaughter.<sup>3</sup> Five of the wounded children died within the next few days.<sup>4</sup> Bishop

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<sup>1</sup> Dan Eiffe, U.S. Commission on International Religious Freedom, *Hearing on Religious Persecution in Sudan*, February 15, 2000, 155.

<sup>2</sup> Quoting Special Rapporteur Gáspár Bíró of Hungary. UN Special Rapporteur for Sudan, *Situation of human rights in the Sudan*, January 30, 1998, E/CN.4/1998/66, ¶ X.3.

<sup>3</sup> When shown the videotape of the Comboni school bombing, a Sudanese government official in Nairobi, Dirdiery Ahmed, responded that "the bombs landed where they were supposed to land. The bombs landed into a military camp. The SPLA has pulled people into this military camp." Godfrey Mutizwa, Reuters, "Sudan school still in shock after fatal air strike," February 11, 2000. A few days following Mr. Ahmed's verification that the bombs hit their intended target, the Sudanese Foreign Minister Mostaf Osman Ismail accused rebel forces of amassing troops in the target area and stated, "If there were civilian groups there, then this was a regrettable matter

Macram (Max) Gassis, whose diocese includes the Comboni School, testified at the U.S. Commission on International Religious Freedom's hearing on Sudan: "Truly, this is a slaughter of innocents, an unbridled attempt to destroy the Nubas' hope and indeed their future by destroying their children."<sup>5</sup>

*Médecins Sans Frontières* (MSF), the most recent winner of the Nobel Peace Prize, operates several hospitals in Sudan like the one that treated the Comboni victims. MSF, which was founded by French doctors in the early 1970s, is now among the most respected international organizations for the quality of its humanitarian work and the bravery of its personnel, who risk their lives in order to provide medical care in some of the most dangerous places on earth.<sup>6</sup> The Swiss section of MSF operates a medical

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and the Sudanese government hopes that this will not happen again." Associated Press, "Government says rebels had troops in area where school was bombed," February 14, 2000. A few weeks later, Justice Minister Ali Mohamed Osman Yassin, told U.S. envoy Harry Johnston, who was then in Khartoum, that the bombing of the school and the killing of the children was a "mistake." Reuters, "Report: Sudan tells U.S. Nuba Raid was 'Mistake,'" March 6, 2000. But even as Mr. Yassin disavowed the motives behind the Comboni attack, the Sudanese military was bombing the Samaritan Purse hospital. Linda Slobodian, "No Excuses for Bombing," *Calgary Sun*, March 7, 2000. For other examples of recent bombings of civilian targets, see Sudan Appendix I below.

<sup>4</sup> Gabriel Meyer, "Sudan After the Bombs," *National Catholic Register*, March 26-April 1, 2000. The Comboni Primary School is a Catholic school, named after Daniel Comboni (1831-1881), the first Roman Catholic Bishop of Khartoum.

<sup>5</sup> USCIRF, *Hearing on Sudan* (Gassis testimony), 19. On February 15, 2000, the U.S. Commission on International Religious Freedom held a day-long hearing on Sudan. The hearing was designed to elicit evidence for Commissioners on the situation in Sudan as it relates to religious persecution. The Commission heard testimony from various witnesses, including human rights activists, humanitarian relief workers, religious leaders and others – Sudanese and non-Sudanese – with direct knowledge of the situation in Sudan. Hearing testimonies, in addition to numerous interviews with other experts by Commission staff, which are included throughout this memorandum, have been instrumental in the development of the Commission's findings and recommendations.

<sup>6</sup> In the speech awarding MSF the Nobel Peace Prize, the Chairman of The Norwegian Nobel Committee, Francis Sejersted, stated:

The essential points for Médecins Sans Frontières are to reach those in need of help as quickly as possible, and to maintain impartiality. They

facility in Kaju-Kaji in Equatoria Province in southern Sudan.<sup>7</sup> In 1999, the year MSF won the Nobel Peace Prize, the Sudanese Air Force bombed the Kaju-Kaji hospital 10 times, dropping a total of 66 bombs.<sup>8</sup> After experiencing repeated attacks on its hospital, MSF began an investigation of several reported bombing sites in Equatoria. Even though its investigation covered only 15 of the sites where civilian bombings allegedly occurred, it documented 60 separate raids on civilian and humanitarian targets during 1999 alone. They concluded that the Sudanese military dropped almost 400 bombs on these targets.<sup>9</sup>

MSF's investigation concluded: *first*, "the bombings are aimed at the civilian population and civilian targets, in particular hospitals and schools"; *second*, the Sudanese government appears to be using chemical weapons and cluster bombs on civilian populations; and *third*, the bombing campaign is a part of the Sudanese government's "*policy of terror*" on civilian populations.<sup>10</sup>

Although there are many factors involved in the conflict in Sudan, the U.S. Commission on International Religious Freedom believes that religion is a major factor. Noted Sudanese scholar, Dr. Francis M. Deng, observed in his seminal work on Sudan:

The relationship between religion and the state, in particular the role of *Shari'a* – Islamic Law, which comprehensively prescribes the righteous

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demand freedom to carry out their medical mandate, and to decide for themselves whom to help according to purely humanitarian criteria. What is more, they insist on making human rights violations known. In addition to helping, in other words, they also seek to draw attention to the causes of humanitarian catastrophes.

([http://www.nobel.no/sejersted\\_eng.html](http://www.nobel.no/sejersted_eng.html) accessed April 29, 2000).

<sup>7</sup> For a discussion of Sudanese geography and demography, see pp. 7-12 below.

<sup>8</sup> Médecins Sans Frontières, *Living under aerial bombardments: Report of an investigation in the Province of Equatoria, Southern Sudan* (February 20, 2000), foreword.

<sup>9</sup> MSF, *Living under aerial bombardments*, 3. See documentation, by incident, at Sudan Appendix I.

<sup>10</sup> *Ibid.*, 3.

path for the Muslim community in public and private affairs – as the law of the land, has emerged as the central factor in the conflict. The full significance of this factor can be appreciated only if religion is seen as a starting point into the complex political, economic, social, and cultural life of the country.<sup>11</sup>

Although religion is critical for understanding the conflict, it is important to avoid overly simplifying a complex situation. Deng warns:

[w]hether the domination is based on racial, cultural, religious, or linguistic considerations is a matter of detail. Whatever the determining factors, they bring identity to the forefront of national policy and confront the country with dilemmas in the choices that must be made between divisive religious dogmas and national unity.<sup>12</sup>

The current government of Sudan manipulates religious language and symbols to justify its policy of terror on the Sudanese population. The government of Sudan identifies itself as Islamic, seeks to impose *Shariah* law and *hudud* punishments, and declared a *jihad* against its opponents.<sup>13</sup> Although the government professes to promote

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<sup>11</sup> Francis M. Deng, *War of Visions: Conflict of Identities in the Sudan* (1995), 16. He continues by observing that “[r]eligion becomes pivotal in defining the identity and status of individuals and groups, determining who gets what from the system. Furthermore, religion and race relations are intertwined, since Islam in the Sudan is closely connected with Arabism as a racial, ethnic, and cultural phenomenon.” Ibid.

<sup>12</sup> Ibid., 177. Deng, it should be noted, is a Christian who was raised in the town of Abyei, which lies a few kilometers north of the boundary that divides northern and southern Sudan.

<sup>13</sup> It is essential to differentiate between the Sudanese government’s use of religious terminology and the ways in which the terms are used by traditional Muslim scholars and the majority of Muslims, as well as from the way that these important terms are often misunderstood by non-Muslims. The word “Islam” means “submission.” A “Muslim,” therefore, is one who submits to the will of God. *Shariah*, frequently translated as “Islamic law,” is neither a document nor a code in the strict sense, but rather an amalgamation of scriptural (*Quranic*) injunctions, sayings of the Prophet Mohammed, juridical rulings, and legal commentaries dealing with all aspects of social, economic and political life, similar to Jewish *Halakhic* law. According to one expert, “Islam, like Judaism, is a religion of laws – it is the legal code, not a theology, which establishes the criteria of right and wrong, proper and improper

behavior. Like *Halakhah*, *Shari'a* is believed to be ordained by God and its scope to be total, ranging from the loftiest ideals to the minutiae of daily life.” Joshua Halberstam,” Supererogation in *Halakhah* and *Shari'a*,” in William M. Brinner and Stephan D. Ricks, eds., *Studies in Islamic and Judaic Traditions I* (1986), 93. Even the words *Halakhah* and *Shariah*, have similar meanings and may be translated as the “path” or “road” to righteousness. Gregory C. Kozlowski, “When the ‘Way’ Becomes the ‘Law’: Modern States and the Transformation of *Halakhah* and *Shari'a*,” in William M. Brinner and Stephan D. Ricks, eds., *Studies in Islamic and Judaic Traditions II* (1989), 2:97-111, 97.

In its ideal form, *Shariah* ensures the rights of all in an Islamic state. See generally, Seyyed Hossein Nasr, *Ideals and Realities of Islam*, ‘*The Shar? ’ah!Divine law, social and human norm*,’ (1975), 93-119. *Fiqh* is Islamic jurisprudence; it forms the basis of *Shariah* and is a process of ongoing interpretation. Thus it is neither static nor monolithic, and may take different forms in different countries or from one period of history to another. A classic text on *Shariah*, by the fourteenth-century scholar, Ahmad ibn Naqib al-Misri, deals with a wide range of subjects, including purity of heart, fasting, divorce, backbiting, crimes, and rules of warfare. *Reliance of the Traveller*, trans. by Nuh Ha Mim Keller (rev. ed.) (1994).

The *hudud* can be characterized as the Islamic “penal code” prescribed by *Shariah*. The rules of *hudud* identify punishable crimes, the types of witnesses needed to convict someone of a crime, and the punishments for various crimes.

*Jihad* is often wrongly translated as “holy war” – a concept that does not exist in Islam. The term “*Jihad*” is derived from the Arabic *jahada*, meaning “effort” or “struggle.” In its strictest sense, *Jihad* refers to a religious struggle or striving for the cause of God and is an important religious obligation for all Muslims. There are two types of *Jihad*: the “greater *Jihad*” is the “struggle” with the self (such as against sin, temptation, and weakness), while the “lesser *Jihad*” consists of the outward “struggle,” in any social, economic, humanitarian or political endeavor, to “enjoin what is good and forbid what is evil.” The noted *Quranic* translator and commentator, Abdullah Yusuf Ali, explains that *Jihad*

may require fighting in God’s cause as a form of self-sacrifice. But its essence consists in (1) a true and sincere Faith, which so fixes its gaze on God, that all selfish or worldly motives seem paltry and fade away, and (2) an earnest and ceaseless activity, involving the sacrifice (if need be) of life, person, or property in the service of God. Mere brutal

Islam, it in fact promotes an extremist interpretation of Islam that leads to the persecution not only of Christians and followers of traditional religions, but of Muslims who do not adhere to its doctrines. The Khartoum government uses its extremist ideology as both a justification and a weapon for prosecuting its human rights abuses and war efforts.

In its May 1, 2000 Report, the U.S. Commission on Religious International Freedom identified Sudan as the “world’s most violent abuser of the rights of religion and belief.”<sup>14</sup> Indeed, the Commission determined that it is appropriate to use the adjective “genocidal” to describe the actions of the Sudanese government during the past 10 years.<sup>15</sup> The *Commission Report* includes a number of specific

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fighting is opposed to the whole spirit of *Jihad*, while the sincere scholar’s pen or wealthy man’s contributions may be the most valuable forms of *Jihad*.

Abdullah Yusuf Ali, *The Qur’an: Text, Translation and Commentary*, n. 1270. See also Seyyed Hossein Nasr, “The Spiritual Significance of Jihad,” *Al-Serat: A Journal of Islamic Studies* 9, no. 1 (<http://www.al-islam.org/al-serat/jihad-nasr.htm> accessed April 29, 2000). A *Mujahid* (plural: *mujahidin*) is one who engages in a *jihad*.

<sup>14</sup> *Report of the U.S. Commission on International Religious Freedom* (May 1, 2000).

<sup>15</sup> USCIRF, *Commission Report*, 2, 3, 14, 25, 26, 30, 35, 36. The Commission determined that the adjective “genocidal” accurately describes many actions of the Sudanese government and its agents. Acts such as the attacks on the civilians of the Nuba Mountains implicate the very values sought to be promoted by the Genocide Convention and by the international community, namely the preservation of the physical integrity of religious and ethnic groups, free choice in matters of religious belief and ethnic identity, and protection of the diversity of the human family. On August 6, 1999, the Catholic Bishops of Eastern Africa issued an appeal for peace in the Sudan which stated, “The Civil War in the Sudan has assumed savage, fratricidal and genocidal dimensions for the last sixteen (16) years.” (<http://www.eglisesoudan.org/english/amecea.htm>). The U.S. House of Representatives, as well as a number of NGOs and activists, have used the term “genocide” to describe all or parts of the ongoing disaster in Sudan. See, for example, H.Con. Res. 75, 106th Cong., 1st Sess. ( “Whereas the National Islamic Front government is deliberately and systematically committing genocide in southern Sudan, the Nuba mountains, and Ingessena Hills”); Dr. Millard Burr (U.S. Committee on Refugees); Nina Shea and Paul Marshall (Freedom House); Mr. William L. Saunders (Family Research Council)

recommendations to respond to the crisis in Sudan.<sup>16</sup>

## **B. Background on Sudan**

The conflict in Sudan has deep roots that include religious, racial, ethnic, and linguistic differences. Sudanese history includes the introduction of Christianity in the sixth century and Islam in the fifteenth century, slavery, exploitation, natural disasters, and colonialism. Although the first civil war in Sudan is dated conventionally from

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(“Genocide in Sudan”); and Africa Rights (with respect to the peoples in the Nuba Mountains).

A number of witnesses testifying before the Commission on the situation in Sudan used the term “genocide” to describe the Sudanese government’s policies and actions. See USCIRF, *Hearing on Sudan* (testimony of Bishop Macram (Max) Gassis, Baroness Caroline Cox, Victoria Ben Ding, Eric Reeves, Dan Eiffe, Roger Robinson, and Roger Winter). Nobel Prize winner Elie Wiesel argued, in a letter to President Clinton, that Sudan is the “site of the world’s most long-lasting religious persecution and genocide.” (July 13, 1999). Abel Alier, the widely respected former Vice President of Sudan, who currently resides in Khartoum, believes that although genocide may have been committed in the past, it is no longer the case. Abel Alier, interview with Commission staff, U.S. Commission on International Religious Freedom, Washington, D.C., February 8, 2000.

By using the term “genocidal,” the Commission has not yet concluded that the actions of the Sudanese government constitute “genocide” as that term is defined within the 1948 Convention on the Prevention and Punishment of the Crime of Genocide or the Genocide Convention Implementation Act of 1987, 18 U.S.C. §§ 1091 et seq., which requires “the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such . . . .” The Genocide Implementation Act defines “substantial part” to mean “a part of a group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity within the nation of which such group is a part.” The Commission is in the process of consulting international authorities on this subject and will make appropriate recommendations by the time of its next report. As a part of its Recommendations, the Commission requests that the U.S. Department of State conduct a full review of this issue. See *Commission Report*, Recommendation 1.7. Regardless of whether the term “genocide” is used, there is no reasonable question that the government of Sudan continues to commit unconscionable acts constituting crimes against humanity and war crimes.

<sup>16</sup> See *Commission Report*, 28-39.

1956, the conflict even then was drawn along lines that had long divided Sudan. As Francis Deng observed, the “state of affairs now prevailing in the Sudan is the culmination of a long historical process in which northerners and southerners were the principal antagonists in the war of racial, cultural, and religious identities.”<sup>17</sup> Regardless of the historical roots of the conflict, the current government of Sudan, which came to power by a *coup* in 1989, uses its power in unprecedented ways to brutalize its religious, racial, and political opponents.

### 1. Geographic and Demographic Factors

Before the scope of the conflict in Sudan can be understood fully, it is important to understand the geography and demography of Sudan. As the largest country in Africa, Sudan covers 1 million square miles (2.5 million square kilometers), and is approximately equal in size to the United States east of the Mississippi River or to western and central Europe from the Atlantic Ocean to the borders of Belarus and Ukraine. Sudan is one of the poorest countries of the world, with a gross domestic product of approximately \$ 400 per capita and it suffers from a long-term drought – as does the entire Sudano-Sahelian region of Africa from Mauritania to Ethiopia.<sup>18</sup> This entire region has been a victim of serious climatic and ecological changes during the past few decades, which have included drought, desiccation, and dryland degradation. The policies and actions of the government of Sudan exacerbate the consequences of the ongoing drought and desertification in Sudan.

Sudan is often portrayed as a country politically divided between the north and the south.<sup>19</sup> In reality, the religious, ethnic, linguistic, and cultural differences create a

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<sup>17</sup> Deng, *War of Visions*, 4.

<sup>18</sup> *The Europa World Year Book 1999*, vol. 2, 3307.

<sup>19</sup> Sudan’s internal political boundaries have been reset and renamed several times since it obtained independence in 1956, and there are disputes over some names. The provinces of northern Sudan traditionally include Red Sea, Nile, Northern Darfur, Kordofan, White Nile, Blue Nile, El Gezira, Khartoum, and Kassala. The provinces of southern Sudan include Bahr al-Ghazal, Equatoria, Junglei, and Upper Nile. For the purposes of this report, it is important to identify four areas in the north: Red Sea (far northeast), Darfur (far west), Khartoum (north central), and Kordofan (the southern part of which includes the Nuba Mountains). The oil fields that have been the source of recent fighting and mass relocation are in two abutting provinces of Sudan: Kordofan (which technically is in “northern” Sudan) and Western Upper Nile (or Unity State, which is in “southern” Sudan).



much more complex picture. There are, for example, nearly 600 ethnic groups and subgroups speaking more than 400 languages and dialects.<sup>20</sup> There are dozens of Muslim, Christian, and indigenous-traditional belief systems and sectarian affiliations. Ethnic-linguistic and religious differences, along with geographic realities, profoundly influence Sudanese national identity and figure prominently in the ongoing political and military conflict between Khartoum and the marginalized groups in the south, west, and east.

There are approximately 30,000,000 Sudanese. Somewhere between 25 percent and 30 percent – or 7 to 10 million – now live in the south.<sup>21</sup> Ethnic and racial groupings in Sudan are not easily discernable, though broader ethno-linguistic identity patterns do provide some guidance in understanding Sudan's history, identity, and the current civil war.

*“Northern” Sudan.* There are several racial and ethnic groups in northern Sudan.<sup>22</sup> The largest ethnic-linguistic group in Sudan is the Arab. Arabic speakers, while not a majority, comprise approximately 40 percent of the total population of Sudan and predominate across north-central Sudan (excluding the northernmost Nile

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<sup>20</sup> Helen Chapin Metz, *Sudan: A Country Study* (1992), 69.

<sup>21</sup> Current estimates of Sudan's population and its ethnic or religious composition are based largely on extrapolation of old data combined with contemporary anecdotal evidence. Thus estimates vary widely from one source to another. The 1956 census, conducted just after independence, was Sudan's first and last official nationwide survey of the population of Sudan. Another census was conducted in 1983 at the onset of the second civil war; however, since the bulk of the south was not accessible and therefore not counted, results were issued on a provisional basis. Current population figures for all of Sudan vary from 28,300,000 (1998: World Bank) to 34,475,690 (1999: CIA World Fact Book).

<sup>22</sup> According to Deng, the “popular view of the North as uniformly Arabized and Islamized is both factually incorrect and politically misleading. Some areas accepted Arabization to a greater degree than others, and this has been well documented. For instance, the Fur in the far west have remained more negroid in feature and culture than other northerners. The Nuba of Kordofan in the midwest have hardly been touched, and those that have been affected have retained their pre-Islamic culture to a greater extent than other peoples.” Deng, *War of Visions*, 44-45.

valley and the Red Sea coast). Among the Arabized peoples of the north are approximately 250,000 Coptic Orthodox, Syrian Orthodox, and other “immigrant” Arab Christian communities.<sup>23</sup> While many northern “Arabs” may trace their genealogies to various Arab tribes that settled in Sudan, the vast majority of Sudanese Arabs, are in fact ethnically mixed indigenous peoples (including Nubians, Beja, Fur, Dinka, and Nuer) who have been Arabized in culture and language over time.<sup>24</sup> There are now estimated to be 1.5 million persons, most of whom are southern Sudanese, living in refugee camps near Khartoum alone.<sup>25</sup>

Non-Arabized peoples of northern Sudan, including the Beja, Nubians, Fallata, Fur, Nuba, and others, comprise approximately one-quarter of the population.<sup>26</sup> The largest of these groups, the Beja, represent about 6 percent of the total population (approximately 1.8 million people), making them the country’s third largest ethnic-linguistic group (after the southern Dinka). The Beja, an ancient people of eastern

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<sup>23</sup> According to tradition, Christianity arrived in northern Sudan in the sixth century, when the Byzantine empress Theodora arrived in Nobatia in approximately 540 C.E.. Metz, *Sudan*, 8. (See also Les églises au Soudan: <http://www.eglisesoudan.org/> accessed April 29, 2000). Subsequently, the “Nubian kings accepted the Monophysite Christianity practiced in Egypt and acknowledged the spiritual authority of the Coptic patriarch of Alexandria over the Nubian Church.” Ibid., 8. Although there were battles as early as the seventh century between Muslims and Christians, Muslims did not prevail in what is now northern Sudan until the fourteenth century. Ibid., 11. “Christianity entered the scene in the sixth century and was able to establish kingdoms that survived for a thousand years. But the rise of Islam in the seventh century set in motion a process of gradual decline for Christianity. This decline culminated in the eventual overthrows of the Christian kingdoms in 1504 . . .” Deng, *War of Visions*, 35. Christianity did not arrive in southern Sudan until the nineteenth century.

<sup>24</sup> Ann Mosely Lesch, *Sudan: Contested National Identities* (1998), 15. In addition, the strong African cultural and linguistic influences on the northern part of the country further complicates the issue of identity, even among northern Sudanese. For example, in 1989, 40 percent of Khartoum residents, overwhelmingly Muslim and Arabic-speaking, identified themselves as “African.” Ibid., 20.

<sup>25</sup> John Harker, *Human Security in Sudan: The Report of a Canadian Assessment Mission*, prepared for the Ministry of Foreign Affairs, January 2000, 9 (citing United Nations Development Programme).

<sup>26</sup> Lesch, *Sudan*, 17.

Hamitic stock, live primarily in the hills along the Red Sea coast in northeastern Sudan and southeastern Egypt. The Beja are almost exclusively Muslim.<sup>27</sup> Nubians constitute approximately 3 percent of Sudan's population and are found along the banks of the Nile valley in the northernmost portion of the country (and in southern Egypt).<sup>28</sup> There is an estimated 1 million people living in the Nuba Mountains.<sup>29</sup> Muslims, however, constitute the clear majority of Sudanese, at somewhere between 60 and 70 percent, according to most sources.<sup>30</sup> In the north, Muslims are about 80 percent of the population – though it is important to remember that there are significant religious differences within the Muslim population.<sup>31</sup>

“*Southern*” Sudan. In the south, Nilotic and other African groups constitute somewhere between one-quarter to one-third of Sudan's population. The south is considerably more heterogeneous than the north, although the people identify

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<sup>27</sup> Although Muslim, the “Beja have retained much of their original identity, which makes them barely distinguishable from their neighbors farther east in Eritrea and Ethiopia.” Deng, *War of Visions*, 38.

<sup>28</sup> The Fallata, descended from various West African tribes (including Fulani, Hausa, and Kanuri), are the second largest non-Arab Muslim group in the north and make up roughly 6 percent of Sudan's population. Meanwhile, the Fur, predominantly though not exclusively Muslim, are an African people concentrated in the western province of Darfur. Similarly, the peoples of the Nuba mountains are also of mixed religious background – roughly evenly split among Muslims, Christians and traditional-indigenous religions. (<http://www.eglisesoudan.org/> accessed April 29, 2000).

<sup>29</sup> Millard Burr, *Working Document II: Quantifying Genocide in Southern Sudan and the Nuba Mountains, 1983-1998* (December 1998), 22.

<sup>30</sup> The Economist Intelligence Unit places the proportion of Muslims at 60 percent. Economist Intelligence Unit, *Country Profile: Sudan* (1999-2000), 14. Meanwhile, the CIA World Fact Book, which is most often cited, places the figure at 70 percent. *CIA World Fact Book 1999* (<http://www.odci.gov/cia/publications/factbook/su.html> accessed April 29, 2000).

<sup>31</sup> Muslims in Sudan are overwhelmingly Sunni and follow the Maliki school of jurisprudence (*madhhab*). Sufism, or Islamic mysticism, also is prevalent throughout Sudanese Muslim society and most Sudanese Muslims belong to a Sufi order (*ṭariqah*), the two largest of which are the Khatimiyya, whose followers live mostly in the north and east, and the Ansar, whose followers live mostly in the west.

themselves – ethnically, historically and culturally – with the Africanism of their neighbors farther to the south and west.<sup>32</sup> The Dinka are the largest of these groups and the second largest ethnic group in Sudan, comprising roughly 12 percent of the total population (approximately 3.6 million people). The Dinka are located primarily in south-central areas of the country as are their Nuer rivals, who make up roughly 5-6 percent.

It is impossible to know with precision the exact breakdown of religious populations in the south. Christians constitute somewhere between 15-48 percent of the southern Sudanese population, with the remainder being indigenous-traditional religions and a minority of Muslims.<sup>33</sup> Some suggest that because of recent growth, Christians

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<sup>32</sup> Lesch, *Sudan*, 18.

<sup>33</sup> The lack of reliable official counts in the south and widespread proselytizing programs by both Muslim and Christian missionary groups (including Sudanese government groups), combined with massive displacement in the southern states as a result of the civil war, have made it impossible to ascertain exact figures. The only official figures come from the 1956 census which reported that followers of indigenous religions comprised 60 percent of the south, while Christians numbered approximately 10 percent. Professor Ann Lesch estimates that approximately 20 percent of the South has now become Christian, while 10 percent has become Muslim. See Lesch, *Sudan*, 20. Recent estimates by Sudanese government officials place the sectarian composition of the South at: 65-79 percent Indigenous-Traditional, 11-18 percent Muslim, and 10-17 percent Christian. UN Special Rapporteur on Religious Intolerance, *Implementation of the Declaration on the Elimination of All Forms of Religious Intolerance and Discrimination Based on Religion or Belief*, A/51/542/Add.2, November 11, 1996, ¶ 68. The Library of Congress publication on Sudan estimates that “in the early 1990s, possibly no more than 10 percent of southern Sudan’s population was Christian.” Metz, *Sudan*, 85. A significantly higher estimate of Christians in the south is 39.6 percent and comes from the *Atlas du monde arabe* (the relevant portion of which is reported at: <http://www.eglisesoudan.org/> accessed April 29, 2000). (*Atlas du monde arabe* is the source relied upon by *l’Association des conférences épiscopales de l’Afrique de l’Est*, the Episcopal Conferences of East Africa). The editors of the *World Christian Encyclopedia*, the most recent edition of which was not available at the time of the release of this memorandum, orally reported to the Commission that they now estimate 48 percent of southerners to be Christian. David B. Barrett, George T. Kurian and Todd M. Johnson, eds., *World Christian Encyclopedia*, 2d ed. (2000).

may now constitute a majority in the south.<sup>34</sup>

## 2. Historical Background

While in recent years the government's abuses exacerbated the ongoing civil war in the south, the policies themselves are not completely new. Attempts to Islamicize the mainly non-Muslim south appeared in the nineteenth century during the period of Turco-Egyptian rule and during the Mahdiyya state.<sup>35</sup> Subsequently, under Anglo-Egyptian rule, the British instituted a "Southern Policy" that actively encouraged the Christianization of the south with the help of various missionary groups and attempted to cordon off the south from northern Islamic influence.<sup>36</sup> Current policies are, in some ways, a response to the former British efforts to draw a line between north and south and to promote Christianity and prevent the spread of Islam in the south. Northerners retain a deep-seated resentment against the British policy, which many believe poisoned southerners, particularly the educated elite, against Islam and Muslims. "To this day, [the British Southern Policy] has left the image that southerners, particularly Christians, are symbols of foreign colonialism and domination and must be converted to Islam in order to be truly integrated into the Sudanese nation."<sup>37</sup> According to Francis Deng, "as far as the North was concerned, the South was the legitimate domain of Arab-Islamic influence, which the missionaries in alliance with British colonial rulers had wrongly usurped."<sup>38</sup>

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<sup>34</sup> For a discussion of these observations, see Nina Shea, "Genocide in Sudan," *Inside the Vatican* 7 (March 1999):16-19. Commissioner Shea correctly notes that the lines between Christian and indigenous people may not always be clear and that some adherents participate in ceremonies connected to both traditions.

<sup>35</sup> *Shariah* was first introduced in Sudan in 1820-21. Deng, *War of Visions*, 43. See also Gabriel Warburg, "Sudan Under Islamist Rule," *Terrorism and Political Violence* 8, no. 2, (Summer 1996): 25-42, 31.

<sup>36</sup> Lesch, *Sudan*, 31-32; Deng, *War of Visions*, 494.

<sup>37</sup> Hizkias Assefa, "Religion in the Sudan: Exacerbating Conflict or Facilitating Reconciliation?" *Bulletin of Peace Proposals*, 21, no. 3, (1990): 255-262, 258.

<sup>38</sup> Deng, *War of Visions*, 210. "Northerners mostly dwell on the separatist policies of the British and especially the encouragement of a southern identity based on traditional systems with the modern influence of Christianity and Western culture. Their remedy is to try to undo this history through Arabization and Islamization, to remove the Christian Western influence, and to integrate the country along the lines of

Southerners, in turn, view northern intentions with a great deal of resentment and suspicion. They widely perceive the north as the home of forces that seek to exploit southerners. This perception is based on the powerful legacy of nineteenth century slave raids by Arab northerners and by their exploitation of natural resources in the south, which continues today. The historical enmity between north and south continues to drive cultural and regional perceptions of the “other” in Sudan. “Resistance to incursions from the Turks and the Arab slave raiders fostered in southerners a deep-rooted suspicion and hatred of any foreigners coming from the north; they regarded all of them as invaders and exploiters.”<sup>39</sup> It is essential to note that while distrust and resentment exist among various communities in Sudan, there is no parity in the responses these feelings elicit: the south has never attempted to conquer or Christianize the north.

Following independence, Islamization policies went hand-in-hand with increased restrictions on Christians. Immediately following independence, the Khartoum government took actions to reverse British efforts to cordon off the south, including suppressing calls for federalism. In 1957, the new government nationalized all missionary schools in the south.<sup>40</sup> The successful coup of Major General Ibrahim Abboud in November 1958 further reinforced the actions against the south. Abboud imposed the Arabic language on southerners, restricted activities of Christian churches, and denounced both Christianity and indigenous religions of the south, leading to widespread revolts in the early 1960s.<sup>41</sup> Abboud, like most of his successors, believed that cultural homogenization was essential to Sudanese national unity and regarded Christianity as an alien faith imposed on the south by foreign missionaries.<sup>42</sup> The new government curbed the activities of missionary groups operating in Sudan, first by nationalizing mission schools in 1957, and then by restricting entry permits of missionary personnel.<sup>43</sup> In 1962, the government passed the Missionary Societies Act,

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the northern model.” Ibid., 205.

<sup>39</sup> Ibid. 71.

<sup>40</sup> Deng, *War of Visions*, 138.

<sup>41</sup> Lesch, *Sudan*, 39.

<sup>42</sup> Lesch, *Sudan*;38, Assefa, “Religion in Sudan,” 258.

<sup>43</sup> Only the Catholic Church, the largest in the country, objected. Protestant missions did not object and even cooperated with Sudanese authorities. See Badal, “Religion and Conflict,” 267.

which required missions in Sudan to secure licenses on an annual basis and to prohibit the baptism of persons under age 18 or their adoption without the consent of local authorities. By 1964, the government expelled all missionary groups in Sudan.<sup>44</sup> As the largest Christian community in Sudan, Catholics were the hardest hit. Meanwhile, the government continued to build mosques, schools, and other Islamic institutions in the south. In certain cases, local notables were pressured to declare themselves Muslims.<sup>45</sup>

It was not until Jaafar al-Numeiri seized power in 1969 that Sudan began to adopt a new approach toward the “southern question.” Shortly after his ascent to power, Numeiri recognized “the historic and cultural differences between the North and South” and pledged that the new regime would bring about a lasting peace settlement on the basis of “the right of the southern people to Regional Autonomy . . . .”<sup>46</sup> Numeiri’s new approach culminated in the Addis Ababa Accords of 1972, bringing peace for the first time in Sudan’s history.<sup>47</sup> Francis Deng described southern reaction to Numeiri’s policies as follows: “Although Arabism and Islam still had the upper hand, southerners no longer felt defensive against and resistant to Arab-Islamic symbols.”<sup>48</sup> In 1977, Numeiri initiated a “national reconciliation” with the Umma Party and the Muslim Brotherhood and nurtured a relationship with the Islamists of Hassan al-Turabi.

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<sup>44</sup> Deng, *War of Visions*, 138-39; Lesch, *Sudan*, 39.

<sup>45</sup> See also Raphael Koba Badal, “Religion and Conflict in the Sudan: A Perspective,” *Bulletin of Peace Proposals* 21, no. 3 (1990): 263-72, 267.

<sup>46</sup> Lesch, *Sudan*, 46.

<sup>47</sup> The Addis Ababa Accords of February 1972, granted residents of the three southern states a measure of autonomy through the Regional Self-Government Act for the Southern Provinces, which made the south into one region governed by an elected High Executive Council. The regional government had its own budget and was responsible for internal security and local administration. The agreement also acknowledged the cultural and religious distinctness of the south for the first time. English was designated as the principal language of the south and southern schools were allowed to teach local languages. Meanwhile, many southerners joined the federal government as a result of the Accords.

<sup>48</sup> Deng, *War of Visions*, 160.

During the second phase of his rule, however, Numeiri reversed course and put Sudan firmly on the path toward imposing *Shariah*.<sup>49</sup> The process of enacting Islamic legislation began on July-August 1983, and culminated a few weeks later when Numeiri renounced the Addis Ababa Accords and decreed that *Shariah* “be the sole guiding force behind the law of the Sudan.”<sup>50</sup> The September Laws, as the decree was called, instituted an Islamic penal code based on *hudud* and on Islamic commercial laws.<sup>51</sup> Numeiri also claimed to be the “imam” with sole authority to interpret *Shariah* and to be the person entitled to absolute loyalty, a move that showed considerable cynicism on his part.<sup>52</sup> Meanwhile, Sudan’s new Islamic leanings ingratiated it to the Saudis, whose aid Sudan badly needed, and who had long urged Sudan to adopt a more Islamic government.<sup>53</sup>

In the south, the September Laws were seen as a repudiation of the Addis Ababa Accords. The popular and political discontent with Numeiri’s rule mounted following the promulgation of the September Laws in 1983 and led to the renewal of the civil war that continues to this day. Sadiq al-Mahdi of the Umma Party and then Prime Minister, denounced the September Laws and protested that they were not in conformity with “true Islam,” particularly in the application of *hudud*. He told a crowd gathered at an Omdurman mosque “to cut the hand of a thief in a society based on tyranny and discrimination is like throwing a man into the water, with his hands tied, and saying to him: beware of wetting yourself . . . .”<sup>54</sup>

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<sup>49</sup> For a discussion of the meaning of *Shariah* and related terms, see note 13 above.

<sup>50</sup> Lesch, *Sudan*, 55.

<sup>51</sup> See note 13 above.

<sup>52</sup> Numeiri’s use of the term “imam” as a religio-political leader is a contemporary Shi’i principle and rather odd given that in predominantly Sunni Sudan, an “imam” is simply one who leads congregational prayer. Numeiri seems to have been influenced by the principles of the Iranian revolution and the notion of *wilayat al-faqih*, or “rulership of the jurisprudent.”

<sup>53</sup> Gabriel Warburg, “The *Sharia* in Sudan,” in *Sudan: State and Society in Crisis* (1991), 90-107, 93.

<sup>54</sup> Warburg, “The *Sharia* in Sudan,” 98.



Early in the morning of June 30, 1989, a small contingent of mid-level military officials, led by Omar Hassan Ahmed al-Bashir, organized a coup with the assistance of Hassan al-Turabi, the French-educated leader of a well-organized extremist political group known as the National Islamic Front (NIF). Bashir and Turabi introduced a series of new laws to suppress both religious and political dissent and to impose their version of the *Shariah* on the Sudanese people.<sup>55</sup>

In April 1992, the government of Sudan secured a religious edict (*fatwa*) from religious leaders in Kordofan declaring all Muslims who resist the government to be apostates and legitimizing attacks on them. This edict, as translated by the Special Rapporteur on Religious Intolerance, makes even more overt the religious dimension and impact of the war:

The rebels of southern Kordofan and southern Sudan have risen against the State and have declared war on the Muslims. Their main objectives are to kill Muslims, desecrate mosques, burn and defile the Koran and rape Muslim women. They are also encouraged in their actions by the enemies of Islam and of Muslims, namely the Zionists, the Christians and arrogant persons who provide them supplies and weapons. Consequently an insurgent, even if he was previously a Muslim, is now an apostate; and a non-Muslim is an infidel who is obstructing the expansion of Islam, and Islam authorizes Muslims to kill them.<sup>56</sup>

With such extremist rhetoric the government is intentionally manipulating Islamic religious language in a way that cannot help but provoke a response from the regime's

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<sup>55</sup> In an extra-constitutional move in late 1999, President Bashir removed Turabi from his position as President of the Parliament. There has been extensive speculation about the extent to which the removal of Turabi signals a change of direction for the Khartoum government. There is no doubt that many of Sudan's neighbors prefer to believe that the ouster of Turabi, whether temporary or permanent, is a positive sign that the regime wishes to move in a new direction. Whatever the future may bring, there is no sign – as of the time of the issuance of this report – that the regime has altered its actual behavior with respect to the killing of civilians or the prosecution of the civil war.

<sup>56</sup> UN Special Rapporteur on Religious Intolerance, *Implementation of the Declaration*, November 11, 1996, ¶ 122. For the full text of the *fatwa*, see African Rights, *Facing Genocide: The Nuba of Sudan* (1995), 289-91.

opponents.<sup>57</sup> The Khartoum government, which espouses an extremist version of political Islam, continues to prosecute the civil war against non-Muslims, moderate Muslims, and other opponents of the regime. The primary victims of the lethal policies are Christians and followers of traditional-indigenous religions.

Although the war is often characterized as being between a Muslim north and a Christian south, this overly simplistic image is firmly rejected by a wide range of persons familiar with Sudan. The Baroness Cox, a long-time supporter of the southern

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<sup>57</sup> Some southerners now view the spread of Christianity as having political as well as spiritual implications.

The elite circles of the Christian South are promoting the idea that Christianity should be consciously cultivated as a pivotal element in southern identity. Christianity, in combination with such other elements as English and the vernacular languages, is the modern model competing with the Arab-Islamic model of the north. Like all sensitive issues involved in the conflict, this point of view may not be openly advocated or even expressed by the leadership and in particular the SPLM-SPLA, but it is an essential ingredient in the hidden agendas of the war of visions.

Deng, *War of Visions*, 222-23. Moreover, the SPLA derives political advantage from some Christian and humanitarian organizations working in Sudan. For example, in March 1999, Christian Solidarity International (CSI) sponsored testimony from the SPLA's John Garang at the UN Commission on Human Rights' annual session in Geneva, a move that prompted some controversy. As another example, Derek Hammond, a prominent South African activist involved in Sudan, proclaims:

Many of the Sudanese People's Liberation Army (SPLA) carry Bibles and have built Chapels at the battle fronts, and spend much time in prayer. . . . The Christian flag is seen all over Southern Sudan, with many of the SPLA divisions marching under the Christian flag . . . even into battle[!] This rebel group (SPLA) who do not enjoy any real support from the west are having amazing victories over a much better equipped (GOS) Arab army . . . .

Derek Hammond, "The Persecuted Church of Sudan: Growing Strong in Adversity," ([http://www.liaafrica.org/sudan\\_articles/persecuted\\_church\\_of\\_sudan.htm](http://www.liaafrica.org/sudan_articles/persecuted_church_of_sudan.htm) accessed April 29, 2000).

rebels and a critic of the Khartoum government, advised her peers in the House of Lords that:

The NIF has been waging a war, which it has publicly declared a Jihad, against its own people, including the predominantly Christian or Animist Africans of the south, the people of the Nuba Mountains, many of whom are Christians, other Animists or Moslems; and more recently, people in eastern Sudan, including the Moslem Beja people. Therefore, this war in Sudan is not a straight Christian/Moslem war.<sup>58</sup>

Similarly, Roger Winter of the U.S. Committee on Refugees, believes “that while there are clear religious issues there, you cannot, in my personal view, divide them as simplistically as Muslim versus non-Muslim.” In fact, some have argued that characterizing the conflict in Sudan solely as a religious war may actually strengthen the hand of the regime by lending legitimacy to its perversion of religion and religious language.<sup>59</sup> Others also are critical of overly simplifying a complex struggle into only a simple religious war.<sup>60</sup>

Another reason to avoid oversimplifying the civil war as north versus south or Muslim versus Christian is the fact that many of the strongest opponents of the Khartoum regime are northern Muslims, including the Beja people of the Red Sea province in northeastern Sudan, many Arabs (such as the Sufi opponents of the regime), and the Fur people of Darfur. The Sudanese government commits atrocities similar to those described above – bombings of hospitals and villages – against the Muslim Fur

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<sup>58</sup> Baroness Caroline Cox, *Parliamentary Debate*, House of Lords, February 17, 1998.

<sup>59</sup> Adam M. Abdelmoula, “The ‘Fundamentalist’ Agenda for Human Rights: The Sudan and Algeria,” *Arab Studies Quarterly* 18, no. 1 (Winter 1996): 1-23, 13. See also Bona Malwal, “The Agony of the Sudan,” *Journal of Democracy* 1, no. 2 (Spring 1990): 75-86, 78.

<sup>60</sup> “It would be simplistic . . . to say that the conflict is based on religion, without looking adequately at the economic, political, and social factors and concerns in the fighting.” Assefa, “Religion in the Sudan, 256-7. “It would be utterly simplistic to reduce the civil wars in the Sudan as being based purely on faith differences. Religion was a code word or a symbol that subsumed many different economic, political and social motives. However . . . the growing hold of Muslim fundamentalism in the Sudan was creating a sense of incompatible world views which by itself has caused or exacerbated conflict.” *Ibid.*, 261.

and Beja.

Christians and followers of traditional-indigenous beliefs, however, have been the primary victims of Khartoum's lethal policies. Most abuses against religious freedom are the result of the increasingly harsh and coercive methods employed by the current government of Sudan in pursuit of its policies of Islamization and, to a certain extent, Arabization.<sup>61</sup> During his trip to Sudan in January 2000, Commission member Elliott Abrams was told by a Catholic priest in the south that "Islam is the crux" and that the government is seeking to control the resources of the south ("soil and oil") by converting or driving out the Nilotic peoples.<sup>62</sup>

### C. The Consequences of the Sudanese Government's Ideology and Actions

#### 1. The Humanitarian Tragedy

*The human toll in Sudan is horrific, whatever numbers are used.*<sup>63</sup>

*Death, starvation, and malnutrition.* Massive death counts arising out of conflicts are not new to Sudan.<sup>64</sup> Since 1983, when the second phase of the civil war began, almost 2 million people have died in Sudan as a direct result of the war, most of whom died from starvation.<sup>65</sup> Although Bosnia and Rwanda prompted the United Nations to create international war-crimes tribunals, and Kosovo prompted NATO to engage in its only large-scale fighting in its 50-year history, the deaths in Sudan elicit no comparable international outcry.<sup>66</sup>

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<sup>61</sup> The process of Islamization is intimately tied to the promotion of the Arabic language, the language of the *Quran* and all Islamic religious literature, and also serves as a means of inculcating Arab social and cultural values.

<sup>62</sup> Elliott Abrams, "Trip Report: Sudan and Kenya," report to the U.S. Commission on International Religious Freedom, Washington, D.C., January 2000, 1.

<sup>63</sup> Harker, *Human Security in Sudan*, 21.

<sup>64</sup> During the Mahdist revolt in the 1880s, between 4 and 5 million of Sudan's 7 million people died from fighting and starvation. Deng, *War of Visions*, 50-51.

<sup>65</sup> UN Special Rapporteur for Sudan, *Situation of human rights in the Sudan: Addendum*, May 17, 1999, ¶ 42.

<sup>66</sup> It must be noted that the United Nations and numerous NGOs have been

It is impossible to quantify accurately the number of deaths in Sudan because, in part, the government of Sudan restricts access to much of the country by independent international observers, a criticism that is made by NGOs and UN Special Rapporteurs.

Many lack the land or dependable security to farm, malnutrition and disease are rampant and relief efforts to many locations are impeded. According to a World Food Programme mid-1998 assessment, out of a total population of 27 million, there were 2.6 million people at risk of starvation in the Sudan, 2.4 million of them in southern Sudan, not counting the estimated 100,000 people isolated and unassisted in SPLA-held areas of the Nuba Mountains.<sup>67</sup>

According to the UN's World Food Programme (WFP), "[u]p to 2.4 million [Sudanese] are severely affected by war in the south, while in the north an additional 200,000 people displaced by drought also require assistance."<sup>68</sup> Although the estimates have improved modestly by 2000, WFP estimates that 1.7 million people currently are at risk of starvation.<sup>69</sup>

*Prohibiting humanitarian missions.* Despite the desperate needs of the Sudanese people, the government of Sudan prohibits international relief missions from bringing food to many who are seriously affected. In 1998, a war-related famine struck much of the southern province of Bahr al-Ghazal and the western province of Darfur. Although Operation Lifeline Sudan (OLS), the United Nations humanitarian relief mission for Sudan, sought to provide food relief for the starving population, the government continued its "no flight" ban on these impoverished areas and advised that it would shoot down any UN or NGO plane attempting to make humanitarian flights to the region.<sup>70</sup> OLS and many NGOs agreed to the conditions imposed by the

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engaged, since 1989, in a massive humanitarian relief effort in Sudan. The obstacles confronting that relief effort will be described below.

<sup>67</sup> UN Special Rapporteur for Sudan, *Situation of human rights in the Sudan: Addendum*, May 17, 1999, ¶ 42.

<sup>68</sup> World Food Programme, "Sudan: Objectives of WFP assistance," March 23, 2000 (<http://www.wfp.org/sudan/> accessed April 29, 2000).

<sup>69</sup> Integrated Regional Information Network, "Sudan: IRIN News Briefs," February 24, 2000.

<sup>70</sup> It must be acknowledged that southern rebels, albeit on a far lesser scale than the government of Sudan, similarly have imposed their own flight bans. See discussion

government. The WFP recently issued an urgent notice that a serious famine is expected to strike Sudan this year (2000) in the hard-hit regions of Bahr al-Ghazal and Darfur. The government's flight bans remain in place, as they have been on a continual basis for 10 years.

In order to respond to the impending massive humanitarian tragedy in Sudan – due to natural and man-made causes – the United Nations World Food Programme launched OLS in 1989. OLS, a consortium involving governments and 35 humanitarian NGOs, has been the principal source of food and other aid to Sudan since 1989. Under the OLS operating protocol, it will deliver aid only to those areas agreed to by the government of Sudan and the SPLA. Although there are times and places where the SPLA has restricted aid deliveries, the government of Sudan has been, by far, the largest impediment to the provision of aid to starving people. There are several NGOs that step into the breach and deliver food and other aid to areas covered by the flight ban imposed by the Sudanese government. These “non-OLS” NGOs run the risk of being attacked and shot down by the government's armed forces.

Since 1989, the U.S. government has contributed approximately \$ 1 billion in aid to Sudan, the vast majority of which has been through OLS. During the last 2 years, however, the U.S. government has increased substantially its support to the non-OLS operators. It appears that in FY 1999, the U.S. government donated approximately \$ 23 million to non-OLS operations and approximately \$ 66 million through OLS, although it is difficult to place a precise figure on amounts contributed.<sup>71</sup> The United States contributes the largest amount of any state.

The year 1998 witnessed a major famine in Sudan, particularly Bahr al-Ghazal. Although 1999 saw improvements, the UN's Resident Co-ordinator for Sudan, Philippe Borel, issued a report in October 1999, that warns of a new and impending humanitarian crisis in Western Upper Nile to rival that of Bahr al-Ghazal in 1998.<sup>72</sup> By deliberately restricting OLS's delivery of humanitarian relief to starving Sudanese, the government of Sudan has, once again, committed crimes against humanity.

*Attacks on civilian populations.* This chapter began by identifying an attack on one civilian target. The government of Sudan has repeatedly engaged in such activities

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at pp. 61-62 below.

<sup>71</sup> See USAID, *Sudan - Complex Emergency Situation Report # 1 (FY 2000)*, January 5, 2000.

<sup>72</sup> Cited in Harker, *Human Security in Sudan*, 3.

during the first quarter of this year. The UN Special Rapporteur reported on similar events in 1999.

The bombing of Yei in May by government forces destroyed property worth US \$10,000 in the compound of an NGO working with UNICEF on demining and [land] mine awareness programmes. One of the trainees was reportedly wounded. On 16 May, 24 cluster bombs were reportedly dropped on Akak, in Twik county, next to a WFP relief distribution site, killing a 10-year-old girl and injuring a boy. The next day, more bombs were dropped on Nyamllell, Aweil, as well as on Ikotos, eastern Equatoria. On 20 May further attacks took place in Yei and Kajo Keiji, western Equatoria, where three people were reportedly killed. On 31 May and 1 June Narus was bombed. On 3 June Ikotos was bombed again.<sup>73</sup>

These bombings are only a small part of the devastation caused by the government of Sudan.<sup>74</sup> By any reasonable application of international law, the persons responsible for these attacks on civilian populations and humanitarian workers are guilty of “committing crimes against humanity” and should be held accountable by all civilized governments of the world. The Commission has concluded that by the nature of its actions, the government of Sudan has engaged in genocidal activity, whether or not that activity meets the technical definition of “genocide” in the 1948 Genocide Convention.

*Displaced Persons.* Since 1983, more than 4.5 million Sudanese have become internally displaced persons (IDP).<sup>75</sup> This number doubles that of the IDPs of Rwanda at the height of the suffering there. There are now estimated to be 1.5 million IDPs living in camps near Khartoum alone.<sup>76</sup> These IDPs live in squalid conditions in what the government of Sudan euphemistically describes as “peace camps.” These refugee

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<sup>73</sup> UN Special Rapporteur for Sudan, *Report on the situation of human rights in the Sudan*, October 14, 1999, A/54/467, ¶ 66. See also the conclusion by UN Special Rapporteur Bíró cited at note 2 above.

<sup>74</sup> The Commission received numerous allegations of such bombings during the first quarter of 2000. See Sudan Appendix I below.

<sup>75</sup> UN Special Rapporteur for Sudan, *Situation of human rights in the Sudan: Addendum*, May 17, 1999, ¶ 42.

<sup>76</sup> Harker, *Human Security in Sudan*, 9 (citing United Nations Development Programme).

camps have only primitive sanitation facilities, are largely dependent on food supplied by the United Nations, and provide their inhabitants with virtually no means of self-support. In order to obtain food, women are often forced into prostitution or into brewing alcoholic beverages, both of which are punishable crimes in northern Sudan.<sup>77</sup>

*Slavery and Slavery-like Practices.* The practice of slavery has long plagued Sudan.<sup>78</sup> One of the controversial debates pertains to the actual numbers of slaves.<sup>79</sup>

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<sup>77</sup> UN Special Rapporteur for Sudan, *Situation of human rights in the Sudan: Addendum*, May 17, 1999, ¶ 79.

<sup>78</sup> In the past, northerners had a tradition of invading the south to capture slaves, a legacy known to southerners today. Deng, *War of Visions*, 69-73. "The slaves converted to Islam, and their children, usually the offspring of mixed unions with Muslim masters, became assimilated as freemen into the Arab-Muslim community in which they lived." Ibid., 76.

<sup>79</sup> It is impossible to know exactly how many individuals have been abducted or how many remain in slavery. Christian Solidarity International (CSI), which claims to have redeemed a total of more than 25,000 slaves since 1995, places the number of slaves currently in captivity at more than 100,000. UNICEF estimates the number to be approximately 20,000. In her February testimony before the Commission, the Baroness Cox estimated that "tens of thousands" have been abducted into slavery. USCIRF, *Hearing on Sudan* (Cox testimony), 120. Alex de Waal, who has documented many of the atrocities in southern Sudan and the Nuba mountains, estimates perhaps as many as 10,000 Sudanese are being held as slaves. Alex de Waal, "Exploiting Slavery: Human Rights and Political Agendas in Sudan," *New Left Review*, No. 227 (Jan./Feb. 1998): 135-146, 135. Representative Eleanor Holmes Norton (D-DC), during the House floor debate on slavery in Sudan on April 4, 2000, noted: "we do not know how many slaves there are. They are African slaves, we know that. The estimates go from 20,000-100,000." *Congressional Record*, 106<sup>th</sup> Cong., 146, H1753. There is no way to confirm or refute these figures, all of which are in the area of educated guesses. The London-based Anti-Slavery International, the largest anti-slavery group in the world, states "At Anti-Slavery International, we know of no evidence to justify an assertion that 20,000 people or more are currently held as captives and slaves in these areas of Sudan. We know that abductions have continued to be reported, despite the organisation of self-defence groups among the Dinka of northern Bahr al-Ghazal, but realise that a number as large as 20,000 would be more visible than the smaller group which we understand is actually held, of hundreds or several thousand individuals scattered around separate households." "Effective measures to free Sudanese held captive and



There is a considerable debate about the proper word to describe the different types of abduction in Sudan. The debate hinges on terminology (“slavery,” “abduction,” or both), who carries out such practices and their motivations, the extent of the problem, and efforts by some NGOs to “redeem” slaves and abductees by paying money for their release.<sup>80</sup> Based on the 1927 Slavery Convention, which defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised,” there is no question that slavery and slavery-like practices exist in Sudan. Commissioner Abrams, in his discussions with missionary and humanitarian representatives in the south, confirmed that slavery and abductions occur in different forms.<sup>81</sup>

The practices of inter-tribal raids, abductions and ransoming have historical roots and are common in Sudan, both between Arab and African tribes and among African tribes themselves.<sup>82</sup> The most nefarious and egregious cases of abduction, however, take place along the 445 kilometer railroad track from Babanusa (Western Kordofan) through Aweil to Wau (Bahr al-Ghazal), in the form of raids on villages by government-backed  *Murahalin*  militiamen. The  *Murahalin*  are mostly Arabic-speaking and Muslim Baggara tribesman, who are traditional rivals of the indigenous Dinka

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forced to work,” submitted to the Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities Working Group on Contemporary Forms of Slavery, Twenty-fourth Session, Geneva, June 23 - July 2, 1999.

<sup>80</sup> According to the 1926 Slavery Convention, the “slave trade” includes “all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.” Slavery Convention, September 24, 1926, art. 1.

<sup>81</sup> Elliott Abrams, “Trip Report: Sudan and Kenya,” report to the U.S. Commission on International Religious Freedom, Washington, D.C., January 2000, 4.

<sup>82</sup> The Dinka-Nuer Peace Covenant signed in Wunlit in March 1999, for example, deals with the issue of individuals abducted by both sides in inter-tribal raids and fighting. See, for example, Resolution I ([http://members.tripod.com/~SudanInfonet/Pure\\_Resolutions.html](http://members.tripod.com/~SudanInfonet/Pure_Resolutions.html) accessed April 29, 2000).

tribes that live near the railway in northern Bahr al-Ghazal.<sup>83</sup> The government arms (although it does not pay) the *murahalin* to protect the supply train which leads to the garrison town of Wau. Jemera Rone of Human Rights Watch/Africa explains:

The murahaleen descend on civilian villages on horseback, armed with the government's automatic weapons. The raids are conducted where there is no SPLA presence; the objective is not to kill enemy troops but to enslave 'enemy' civilians and weaken the Dinka, economically and socially. The Dinka are outgunned and horseless; they cannot protect their women, children, or cattle. Those who resist are killed.<sup>84</sup>

Thus, rather than limiting their work to protecting the train from rebels, these armed militias terrorize and intimidate Dinka villagers. The exact number of those abducted and the nature of their captivity is the subject of much debate. It is believed that as many as 15,000 women and children, mainly from Bahr al-Ghazal, have been abducted and raped, remain in captivity, and are used for forced labor.<sup>85</sup> Human Rights Watch has complained to Sudanese officials that those abducted are often abused and mistreated, and that local law enforcement authorities regularly fail to assist families of abducted individuals or to prosecute those responsible.<sup>86</sup> This led Human Rights Watch to conclude that "the government of Sudan is guilty not only of knowingly arming, transporting and assisting the slave-raiding militia, it also is guilty of not enforcing its own laws against kidnaping, assault, and forced labor."<sup>87</sup>

Several international and missionary organizations, including U.S.-based groups, advocate and engage in "slave redemption" by purchasing the freedom of

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<sup>83</sup> See Peter Verney, *Sudan: Conflict and Minorities* (1995) (published for the Minority Rights Group, London.)

<sup>84</sup> U.S. Congress, House Committee on International Relations, Subcommittee on International Operations and Human Rights and Subcommittee on Africa, *Crises in Sudan and Northern Uganda*, 105th Cong., 2d Sess., 1998.

<sup>85</sup> Harker, *Human Security in Sudan*, 2 (citing information gathered from UNICEF and Save the Children Fund).

<sup>86</sup> Human Rights Watch, *Background Paper on Slavery and Slavery Redemption in the Sudan*, March 12, 1999.

<sup>87</sup> Human Rights Watch, *Background Paper on Slavery*.

Sudanese captives and abductees. They argue that there is an imperative based on the need to extract people from slavery by any means necessary. On the other hand, some observers criticize the practice on the basis that purchasing people from slavery might actually stimulate a market for human beings and could, in the long run, lead to more abductions and, potentially, fraud. Furthermore, allegations of abuse and manipulation by groups and individuals inside and outside Sudan further complicate the issue of redemption. UNICEF reportedly does not believe that the practice of redemption is fueling the problem of abductions, but it does oppose the practice as a matter of principle, at least in Sudan.

Sudanese law officially bans slavery and forced servitude. A 1992 publication issued by the Sudanese Ministry of Culture and Information declares:

The issue of the slave trade, whatever historical justifications it had, and regardless of the perception of many quarters therein, whether colonialism, the North or citizens of the South, has been and will continue to be for ever, the most atrocious practice ever known in history.<sup>88</sup>

Furthermore, the government of Sudan denies the existence of “slavery” as such, though it recently acknowledged that abductions and forced servitude do occur.<sup>89</sup> The government insists, however, that these abductions are not officially sanctioned and are the result of a lack of central control and breakdown in law and order in various parts of the country.<sup>90</sup> Abel Alier believes that these abductions take place principally in

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<sup>88</sup> Ministry of Culture and Information, Republic of Sudan, *Sudan Year Book* (1992), 22.

<sup>89</sup> Telephone conversation with UNICEF Sudan Program Officer (New York), March 29, 2000. The UN Commission on Human Rights, like the Government of Sudan, uses the term “abduction” to describe these types of activities. In May 1999 the Sudanese government established the Committee for the Eradication of the Abduction of Women and Children (CEAWC), which is working in cooperation with UNICEF, Save the Children, and other nongovernmental organizations in Sudan.

<sup>90</sup> Gilbert Lewthwaite and Gregory Kane, “Tales of slavery contradicted by Sudan diplomat,” *Baltimore Sun*, June 16, 1996.

locations where there is a breakdown of law and order.<sup>91</sup> Investigators for the Harker Report observed that Sudanese officials appeared to be more upset by the use of the word “slavery” than by the practice itself. “The GOS, focusing on the visible absence of ‘classical Slave markets,’ bridles at the use of the term Slavery more than at the plight of these women and children . . . .”<sup>92</sup>

The government of Sudan has exploited historical Arab-Dinka animosities to further its own current interests by commissioning these militia groups to carry out raids on Dinka villages under the assumption that they may keep whatever booty they can, including human beings.<sup>93</sup> Thus, despite its protestations and the fact that it does not appear to be directly involved in slavery or abduction, the government of Sudan, nevertheless, bears full responsibility for the atrocities committed at the hands of the *murahalin*. The Harker investigation concluded: the practice of “making life hell in Dinka villages in Bahr El Ghazal is either a measure of the inability of Sudan, a state at war, to provide human security to its citizens, or it is a war strategy, one wilfully dismissive of humanitarian law as it applies to internal conflict.”<sup>94</sup> In 1997, the UN Commission on Human Rights adopted a resolution that, among other things,

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<sup>91</sup> Abel Alier, interview with Commission staff, U.S. Commission on International Religious Freedom, Washington, D.C., February 8, 2000.

<sup>92</sup> Harker, *Human Security in Sudan*, 7.

<sup>93</sup> Harker’s delegation noted: “We believe there is formal recruitment by the GOS of militia to guard the train from possible SPLA attack. The *murahleen* then go out from the train and attack villages suspected of supporting the SPLA on the way from Babanusa to Wau and back. Their booty consists not just of goods, but also of women and children.” Ibid. at 4. See also Human Rights Watch/Africa, *1999 World Report*, “Sudan: Human Rights Developments,” (<http://www.hrw.org/hrw/worldreport99/africa/sudan.html> accessed April 29, 2000).

<sup>94</sup> Harker, *Human Security in Sudan*, 7. Peter Verney, editor of the *Sudan Update* and author of Anti-Slavery International’s May 1997 report “Slavery in Sudan,” writes: “The Sudan Government is guilty of enough crimes for its critics not to need to distort or exaggerate its record. Unfortunately, this is precisely what some of its opponents are doing in the slavery debate. There is a danger that wrangling over slavery can become a fatal distraction from abuses which actually are part of government policy - which slavery is emphatically not. Unless properly understood, the issue can become a tool for indiscriminate and wholly undeserved prejudice against Arabs and Muslims.” Peter Verney, *Slavery in Sudan* (1997), 23.

expressed its “deep concern at continued serious human rights violations by the Government of the Sudan, including . . . slavery and slavery-like practices . . . .”<sup>95</sup>

## 2. Oil

Sudan has proven oil reserves of 262 million barrels and estimated reserves of more than eight billion barrels. With the completion in mid-1999 of an oil pipeline from south-central Sudan to the Red Sea, Sudan’s daily crude output rose dramatically from an estimated 12,000 barrels in 1998 to 150,000 barrels in 1999, and is expected to reach 250,000 barrels in 2000.<sup>96</sup> Experts estimate that the Sudanese government will derive approximately \$ 300 - 400 million annually from the new pipeline.<sup>97</sup> The Harker investigation feared that oil extraction may be contributing to the “forced relocation” of civilian populations living near the oil fields and concluded that, “[i]t is difficult to imagine a cease-fire while extraction continues . . . .”<sup>98</sup> The State Department echoed that sentiment through Secretary Albright’s spokesman James Rubin, who noted that new oil revenues “provided a new source of hard currency for a regime that has been responsible for massive human-rights abuses and sponsoring terrorism outside Sudan,” and added that the United States is “very concerned that investment in the Sudanese oil sector strengthens the capacity of the Khartoum regime to maintain and intensify its brutal war against its own people.”<sup>99</sup>

In addition to offshore discoveries in the Red Sea, oil has been discovered in

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<sup>95</sup> For the full text of the resolution, see UN Commission on Human Rights, *Situation of human rights in the Sudan*, “Commission on Human Rights resolution 1997/59,” April 15, 1997, E/CN.4/RES/1997/59.

<sup>96</sup> U.S. Energy Information Administration, “Sudan,” (November 1999), (<http://www.eia.doe.gov/cabs/sudan.html> accessed April 29, 2000).

<sup>97</sup> USCIRF, *Hearing on Sudan* (Reeves testimony), 104.

<sup>98</sup> Harker, *Human Security in Sudan*, 16.

<sup>99</sup> Jeff Sallot and Steven Chase, “U.S. rebukes Ottawa on Sudan: Axworthy backs down on threat to impose sanctions against Talisman for fueling civil war,” *Globe and Mail*, February 15, 2000.

two major areas within the Muglad Rift Basin Complex in south-central Sudan.<sup>100</sup> The more significant of the two at present is in “northern” Sudan (in south Kordofan), and the second lies immediately across the 1956 border in southern Sudan (western Upper Nile or “Unity State”). The first area, which contains the fields known as “Heglig” and “Unity,” is operated by the Greater Nile Petroleum Operating Company (GNPOC), a consortium of four companies (or their subsidiaries) including China National Petroleum Company (CNPC), Petronas, Talisman Energy Inc., and Sudapet Ltd.<sup>101</sup> GNPOC began to produce commercially exportable quantities of oil in 1999.<sup>102</sup>

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<sup>100</sup> MBendi, “Oil Industry Profile Sudan” (<http://mbendi.co.za/cysuoi.htm> accessed April 29, 2000).

<sup>101</sup> The percentages of ownership interests of the GNPOC are:

%	GNPOC venturer	Parent	Nationality
40	China National Petroleum Company (CNPC)	same (wholly owned by the Chinese government)	China
30	Petronas Carigalie (Nile) Sdn Bhd	Petronas (wholly owned by the Malaysian government)	Malaysia
25	Talisman (Greater Nile) BV	Talisman Energy Inc. (publicly traded)	Canada
05	Sudapet	same (wholly owned by the Sudanese government)	Sudan

<sup>102</sup> A predecessor of Talisman, Arakis Energy Corporation, reported as early as August 1, 1996, that it had already delivered almost 50,000 barrels of crude oil extracted from Heglig directly to the government. Arakis Energy Corporation Press Release, August 1, 1996. (<http://www.talisman-energy.com/html/index.html> accessed April 29, 2000).

The oil is extracted from the Heglig and Unity fields and pumped through the Sudan Oil Pipeline, which extends 932 miles (1,500 kilometers) to Port Sudan on the Red Sea. The Sudan Oil Pipeline was built by a CNPC subsidiary (China Petroleum Engineering & Construction (Group) Corp.), Wier & Allen Diesel (UK), Mannesman Hendel (originally German, now owned by Technip of France), and Techint (Argentina). The lead project manager was McDonald Engineering of Canada. See “Sudan: Oil starts to flow through new pipeline,” *Middle East Economic Digest*, July

The second area, 30 kilometers southeast of Unity Field, but in southern Sudan, contains a field named “Concession 5A.” Concession 5A is owned by a joint venture that includes IPC Sudan Limited (a wholly owned subsidiary of Lundin Oil Corporation of Sweden), Petronas Carigali Overseas Sdn Bhd, OMV (Sudan) Exploration GmbH (of Austria), and Sudapet. The fierce fighting between government and rebels in the nearby town of Bentiu has kept Concession 5A from becoming fully operational.<sup>103</sup>

The development of the Heglig and other nearby oil fields has become controversial for three interrelated reasons: *First*, the proceeds from the sale of oil are a significant source of revenue for the cash-strapped Sudanese government and are a stimulus for additional fighting. UN Special Rapporteur Franco concluded that “the conflict has been aggravated during 1999 by the developments in the oil zones. The strategic implications surrounding oil production have seriously compounded and exacerbated the armed conflict, resulting in the further deterioration of the overall situation of human rights and respect of humanitarian law.”<sup>104</sup> The Harker Commission was advised by officials of the UN’s World Food Programme that the increase in fighting in Western Upper Nile (Unity State) is due to the oil revenues.<sup>105</sup>

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16, 1999. (available online), and MBendi, “Oil Industry Profile Sudan” (<http://mbendi.co.za/proj /p07m. htm> accessed April 29, 2000). The pipeline was constructed in one year (1998-99). The capital for the pipeline was largely supplied by Talisman. U.S. Energy Information Administration, “Sudan,” (November 1999), (<http://www.eia.doe.gov/cabs/ sudan.html> accessed April 29, 2000). Although currently pumping 150,000 barrels per day, it has an expansion capacity of up to 450,000. The transported crude oil is either refined at the new Port Sudan Petroleum Refinery or shipped from Bashair oil terminal at Port Sudan. The refinery also was built by CNPC’s China Petroleum Engineering & Construction (Group) Corp. The United States Energy Information Administration estimates that the Heglig and Unity fields contain between 660 and 1.2 billion barrels of crude oil. Prior to 1999, Sudan was a net importer of oil. It is expected that henceforth, Sudan will be a net exporter.

<sup>103</sup> There is another nearby oil field, Adar, which is operated by Gulf Petroleum Corporation (Qatar). CNPC also owns a concession in Block 6 in southern Sudan. U.S. Energy Information Administration, “Sudan.”

<sup>104</sup> UN Special Rapporteur for Sudan, *Situation of human rights in the Sudan*, October 14, 1999, ¶ 142.

<sup>105</sup> Harker, *Human Security in Sudan*, 2.

*Second*, there is highly credible evidence that the government of Sudan systematically destroyed villages in areas surrounding the oil fields in order to clear them of human population.<sup>106</sup> UN Special Rapporteur Leonardo Franco of Argentina reported dozens of attacks by the Sudanese government against civilians in the area surrounding the oil fields.

[I]n early May, in a 10-day offensive, government forces swept through Ruweng county in western Upper Nile, attacking and killing scores of civilians with Antonov bombers, helicopter gunships, tanks and artillery, abducting hundreds and burning over 6,000 homes, with a view to clearing a 100-km swathe of territory around the oilfields.<sup>107</sup>

*Third*, there are highly credible reports that the Sudanese military used GNPOC's Heglig airfield as a staging ground for bombing raids and helicopter-gunships attacks not only against the rebel troops fighting a few kilometers to the south in Western Upper Nile, but on civilian populations, including those in the Nuba Mountains only a few kilometers to the north. The Canadian Harker Report concluded that "the gunships and Antonovs which have attacked villages south of the rivers flew to their targets from the Heglig airstrip in the Talisman concession."<sup>108</sup> It also concluded that it is reasonable to assume that the government of Sudan used the Heglig airfield to launch attacks not only on the villages, but on rebel troops in the area.

### 3. Persecution of Christians and Traditional Believers

Imposition of *Shariah* on non-Muslims. As previously discussed, the government's military offensive is motivated, in part, by its view of religion – and the consequent suffering may be deemed persecution against both the Christian and

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<sup>106</sup> See Human Rights Watch/Africa, *Famine in Sudan 1998: The Human Rights Causes*, February 1999, Section XI (<http://www.hrw.org/reports/1999/sudan/> accessed April 29, 2000). UN Special Rapporteur for Sudan, *Report on the situation of human rights in the Sudan*, October 14, 1999, ¶ 66, 77.

<sup>107</sup> UN Special Rapporteur for Sudan, *Report on the situation of human rights in the Sudan*, October 14, 1999, ¶ 66.

<sup>108</sup> Harker, *Human Security in Sudan*, 15. "Antonovs" are Russian-built cargo planes somewhat akin to American-built C-130s. The Sudanese military pushes the bombs out the back of the planes. The planes fly at altitudes that prevent them from being hit by shoulder-launched anti-aircraft missiles.



Muslims victims. The suffering caused by the war, accordingly, has at least in some part, a religious motivation. Since the NIF-backed coup of 1989, discrimination and serious violations of religious freedom increased dramatically. Non-Muslims in Sudan, both Christians and followers of traditional beliefs, in essence have become second-class citizens subject to a wide range of violations, including the misapplication of *hudud*, legal and social discrimination, forcible or coerced conversions to Islam, restrictions on religious institutions, harassment of religious personnel, and persecution. As is shown in this memorandum, these have been documented by numerous diplomatic, humanitarian, and human rights observers.

*Shariah* laws technically do not apply in the south. The Minister of Justice told the UN Special Rapporteur for Religious Intolerance that the consumption of alcohol in the south, for example, is allowed for both non-Muslims and Muslims, and former Speaker Turabi made a similar claim.<sup>109</sup> According to the Penal Code of 1991, *hudud* provisions are not carried out in the southern states “unless the accused himself requests application of the said provisions to him or the legislative body concerned decides to the contrary.” The UN Special Rapporteur on Religious Intolerance expressed concern over this provision on the basis that (1) the legislative body is empowered to take a contrary decision, and (2) it does not apply to non-Muslims in the north.<sup>110</sup>

The situation in the north is quite different. No exceptions are made for the application of any laws or regulations, including the *hudud*, which apply to all citizens regardless of faith.<sup>111</sup> According to NGO observers and other unofficial reports, non-Muslims have been subjected to *hudud* for transgressing specifically Islamic guidelines, particularly with regard to dress and the sale or consumption of alcohol. In addition, there have been several reports of the misapplication of *hudud* against non-Muslims. Michael Gassim, an 18-year-old Christian from the south, was sentenced to cross amputation (of his right hand and left foot) for burglarizing a Port Sudan shop, while his two accomplices, both Muslim northerners, were sentenced to various terms in prison.<sup>112</sup> In addition, according to one analysis, the overwhelming majority of the

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<sup>109</sup> UN Special Rapporteur on Religious Intolerance, *Implementation of the Declaration*, November 11, 1996, ¶ 46.

<sup>110</sup> UN Special Rapporteur on Religious Intolerance, *Implementation of the Declaration*, November 11, 1996, ¶ 44.

<sup>111</sup> Warburg, “Islamist Rule in the Sudan,” 33.

<sup>112</sup> Boyle and Sheen, *Freedom of Religion*, 73.

victims of *hudud* punishments are from the poor marginalized areas of Sudan – the Nuba Mountains, Darfur, southern Blue Nile and the southern states.<sup>113</sup>

In another incident, Bishop Peter al-Birish, the Anglican Bishop of Khartoum was sentenced to public flogging despite the fact that *Shariah* procedures for substantiating the charge had not been met.<sup>114</sup> These cases serve to illustrate the discriminatory way in which the *hudud* are often applied to non-Muslims for the purposes of harassment or intimidation. The massive influx of non-Muslim refugees from the south into the north has further complicated the matter.

*Forced conversions and religious coercion.* There are reports of individuals being forcibly or otherwise coercively converted to Islam. Most forcible or coercive actions seem to take place among the Nuba of Southern Kordofan and the Gamk of the Ingessana Hills in Southern Blue Nile, though there are reports of incidents elsewhere in the south such as Bahr al-Ghazal.<sup>115</sup>

As part of the “Comprehensive Call” policy announced by President Bashir in 1992, the government of Sudan undertook an aggressive program of Islamizing the Nuba population. Much of this religious coercion takes place in so-called “peace villages” – a cynical euphemism employed by the government officials to describe camps for the mostly non-Muslim Sudanese who have been forcibly removed from their homes and villages by government or PDF militia forces and other displaced people from areas of conflict between government forces and the SPLA. Nearly one-third of the Nuba population have been forcibly removed from their homes and villages and

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<sup>113</sup> Peter Nyot Kok, “Conflict over laws in the Sudan: ‘from pluralism to monolithicism,’” in *Sudan: History, Identity, Ideology*, (1991): 235-252, 243-4.

<sup>114</sup> Incident reported in Boyle and Sheen, *Freedom of Religion*, 75. According to the *Quran* (24:4), *four* witnesses are required to substantiate a charge of adultery, a requirement that, given the circumstances under which adultery takes place, is almost impossible to meet.

<sup>115</sup> Christian Solidarity International has gathered testimonials from numerous southern Sudanese, mainly from Bahr al-Ghazal, who have been abducted or enslaved, many of whom report being forced to convert to Islam by their captors. See Christian Solidarity International, “Visit to northern Bahr El Ghazal, Sudan, focusing on slavery,” February 11-15, 2000 (<http://www.csi-int.ch/report.html> accessed April 29, 2000).

resettled in the peace villages.<sup>116</sup> According to one account, the residents of these peace villages, 80 percent of whom were children, are subjected to intensive religious indoctrination and even the forcible circumcision of men.<sup>117</sup> There are also reports of systematic rape and threatened rape of Nuba women in the “peace villages.”<sup>118</sup>

These peace villages serve three objectives: (1) aiding the regime’s counterinsurgency strategy; (2) providing a captive labor pool for mechanized farming schemes; and (3) allowing access to captive populations for Islamic re-education and military conscription as so-called *mujahidin* in the government-backed PDF militia.<sup>119</sup> Several sources inside Sudan have confirmed reports that non-Muslim children are abducted and forced to undergo Islamic “re-education.” In early 1996, raiders abducted Christian children from the Nuba Mountains in Kadugli and reportedly placed them in an Islamic school in Um Ruaba. Others sent 100 Dinka children from Bor to the north in order to be Islamized.<sup>120</sup>

In addition to government-backed militias, semi-official relief organizations are also reported to be involved in religious coercion of non-Muslims. The Dawah Islamiyya, for example, which operates in a number of refugee camps, is reported to distribute food aid “in a selective fashion, either to Muslims or to those who agree to embrace Islam.”<sup>121</sup>

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<sup>116</sup> Lesch, *Sudan*, 163. See also Mark Bradbury, “International Responses to War in the Nuba Mountains,” *Review of African Political Economy* 25, no. 77 (September 1998): 463-474, 465. For a quantitative account of forcible resettlement, see Burr, *Quantifying Genocide*.

<sup>117</sup> Lesch, *Sudan*, 163.

<sup>118</sup> Winter, “The Nuba People.”

<sup>119</sup> See African Rights, *Facing Genocide*, 120-28.

<sup>120</sup> Both of these incidents were reported by the Special Rapporteur for Religious Intolerance. See UN Special Rapporteur on Religious Intolerance, *Implementation of the Declaration*, November 11, 1996, ¶ 95.

<sup>121</sup> Bulad, “Triple Genocide,” 22. The State Department Report on International Religious Freedom confirms that “reliable reports” exist that Islamic relief organizations associated with the Sudanese government often withhold services from the needy unless they convert to Islam. House Committee on International Relations and Senate Committee on Foreign Relations, *Annual Report: International Religious Freedom 1999*, report prepared by U.S. Department of State, 106th Cong., 2d

The government also promotes Islam through other more subtle forms of coercion. For example, the Organization of Prisoners and Treatment of Inmates Act (1992) provides for the early release of prisoners who memorize the *Quran*. There are no similar provisions for other religions, leading many to view this as another form of encouraging conversion to Islam. According to the Special Rapporteur, a commission supervised by prison authorities in consultation with the Ministry of Religious Endowment tests a prisoner's knowledge of Islam and is authorized to make recommendations on early release accordingly.<sup>122</sup>

In 1992, the NIF government nationalized all schools in Sudan, including private Christian schools, mandated use of the Arabic language at all levels. According to church officials and other observers in Sudan, the implementation of Islamization and Arabization policies in education have specifically affected various religious and ethnic communities in Sudan. There are reports of discrimination against Christians in public schools and of non-Muslim students who are pressured to study the *Quran* and comply with NIF-imposed Islamic dress codes.

*Criminalizing of "apostasy" from Islam.* The 1991 Penal Code criminalized apostasy (*ridda*), and subsequent court rulings have rendered it a capital offense.<sup>123</sup> Conversion from another religion to Islam, however, is not considered "apostasy," but

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sess., 2000, Joint Committee Print, 553.

<sup>122</sup> UN Special Rapporteur on Religious Intolerance, *Implementation of the Declaration*, November 11, 1996, ¶ 52.

<sup>123</sup> Article 126 of Sudan's Penal Code prohibits apostasy:

(1) Every Muslim who advocates the renunciation of the creed of Islam, or who publicly declares his renouncement thereof by an express statement or conclusive act, shall be deemed to commit the offense of apostasy.

(2) Whoever commits apostasy shall be given a chance to repent during a period to be determined by the court; if he persists in his apostasy, and is not a recent convert to Islam, he shall be punished with death.

(3) The penalty provided for apostasy shall be remitted whenever the apostate recants his apostasy before execution.

UN Special Rapporteur on Religious Intolerance, *Implementation of the Declaration*, November 11, 1996, ¶ 20.

rather is promoted as a matter of policy by the government of Sudan. Turabi and representatives of the Consultative Human Rights Council, a government-sponsored human rights body, informed the UN Special Rapporteur on Religious Intolerance that Muslims may convert to other religions, but that they may not practice it publicly for fear of disturbing public order. Turabi will say to foreign visitors, "If a Muslim wakes up in the morning and says he doesn't believe any more, that's his business."<sup>124</sup> Apostasy remains a crime, however, and the Special Rapporteur reports that "serious restrictions," including the threat of capital punishment, existed for Muslim converts.<sup>125</sup> For example, according to Human Rights Watch, a Nuban detained in 1998 for apostasy continues to be held in prolonged arbitrary detention.<sup>126</sup> Moreover, given the discrimination against non-Muslims in all aspects of Sudanese society, many non-Muslims convert to Islam out of either convenience or coercion and may face serious punishments for returning to their original religion.<sup>127</sup>

*Christians.* In spite of the government's rhetoric claiming that it respects the rights of followers of the "revealed religions," Christians of all denominations and backgrounds in Sudan are subjected to repression, discrimination, and persecution. These include restrictions on operations of their churches and on church personnel, harassment, and persecution.

Given the distinctions in both development and cultural orientation of northern and southern Christians, there are important differences between the experiences of Christians in the north and those in the south, though persecution against Christians is prevalent in both the north and the south. In the south, where Christianity has existed for more than 150 years, the government of Sudan adopted a more heavy-handed approach to Christians and their institutions. The government aims to restrict the activities of missionary groups and ultimately "roll back" Christianity by actively

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<sup>124</sup> Milton Viorst, "Fundamentalism in Power: Sudan's Islamic Experiment," *Foreign Affairs* 74, no. 3, (May/June 1995): 45-58, 53.

<sup>125</sup> UN Special Rapporteur on Religious Intolerance, *Implementation of the Declaration*, November 11, 1996, ¶ 48.

<sup>126</sup> Human Rights Watch, *World Report 2000*, 78.

<sup>127</sup> Kok, "Conflict over Laws," 244. We have been unable to confirm any cases of the death penalty being inflicted during the past several years.

promoting Islam among the southerners. Meanwhile, the government's war with SPLA rebels and its continued drive in the south have merged, under the regime in Khartoum, into a single policy.

Many of the northern Christians, on the other hand, are part of a community that has existed in Sudan for more than 13 centuries and have undergone a similar historical process of Arabization as have northern Muslims.

In recent years, however, these well-established communities of indigenous Christians, primarily the Coptic Orthodox Christians, have been subjected to severe discrimination and harassment. Copts had traditionally been an economically affluent and socially integrated community in the north. In the early 1990s, Christian civil servants and other government officials, including a Coptic Supreme Court justice, were dismissed from their posts *en masse* and applicants to government posts were required to provide legal proof that they were Muslim.<sup>128</sup> Northern Christians were forcibly conscripted into the PDF and in many cases were forced to fight against their fellow Christians in the ongoing civil war in the south.<sup>129</sup> The 1991 execution of Coptic pilot Girgis Yustus, along with two Muslims, for the illegal possession of foreign currency, also was viewed as an attempt at intimidating the large Coptic community in northern Sudan. Girgis reportedly was offered money and a pardon if he converted to Islam.<sup>130</sup>

Special Rapporteur Gáspár Bíró found several such examples of harassment:

V.1. The Special Rapporteur has continued to receive numerous allegations concerning the demolition of Catholic centres by government authorities. It is alleged that this is a calculated plan based on government policy, albeit undeclared, to make the community expression of the Christian faith extremely difficult, particularly by preventing Christians from having places of worship and by destroying the places they have built. The reasons given by authorities for the destruction of these centres are to improve urban planning, to build new roads or public utilities, or to upgrade the quarter targeted.

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<sup>128</sup> Lesch, *Sudan*, 139.

<sup>129</sup> Lesch, *Sudan*, 139. See also Peter Verney, *Sudan: Conflict and Minorities*, 26 and Abdelmoula, "The 'Fundamentalist' Agenda," 16.

<sup>130</sup> Lesch, *Sudan*, 139. See also Verney, *Sudan: Conflict and Minorities*, 26.

V.2. On 7 and 29 December 1996, the Catholic Multipurpose and Prayer Centre in Dorusha'ab, Khartoum North, was razed. On 31 March 1997, the Teria Multipurpose Catholic Centre in Khartoum was demolished. The authorities justified the demolition of the church on the grounds that it was too noisy, a source of insecurity and a centre for Christianization of the Muslim community, an activity which could not be tolerated. On the following day, 1 April 1997, the authorities demolished the Catholic Multipurpose and Prayer Centres of Kalakla Gubba and Wad'Amara. On 19 July 1997 the Sudanese authorities at Jebel Aulia camp destroyed a Catholic Multipurpose Centre which the displaced community used as a prayer centre and secondary school. The demolition affected over 3,000 secondary school students. The reason given for the demolition was that the Centre was operating within a residential area.<sup>131</sup>

Christians all across Sudan now face severe restrictions on their religious institutions and the practice of their faith. The government has not allowed the building or repair of churches in Khartoum since 1969, and there are recent reports of closings of Coptic and Armenian schools in the north.<sup>132</sup> According to Human Rights Watch, between 30 and 50 Christian schools, centers and churches have been demolished by government authorities in Khartoum state throughout the 1990s, ostensibly because they lacked the proper permits.<sup>133</sup> According to Bishop Macram Gassis, a total of 750 Christian schools have already been confiscated by the government.<sup>134</sup> The government rarely grants building permits to Christian institutions, while permits for mosques and other Islamic institutions are readily attainable.<sup>135</sup>

Despite the repeal of the 1962 Missionary Societies Act in 1994, the Provisional

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<sup>131</sup> UN Special Rapporteur for Sudan, *Situation of human rights in the Sudan*, E/CN.4/1998/66, January 30, 1998, ¶¶V.1-V.2.

<sup>132</sup> Boyle and Sheen, *Freedom of Religion*, 75; UN Special Rapporteur on Religious Intolerance, *Implementation of the Declaration*, November 11, 1996, ¶ 94.

<sup>133</sup> Human Rights Watch, *World Report 2000*, 78.

<sup>134</sup> USCIRF, *Hearing on Sudan* (Gassis testimony), 21.

<sup>135</sup> Human Rights Watch, *World Report 2000*, 78.

Order of October 4, 1994, all but disenfranchised Sudanese churches. According to the new decree, churches were no longer classified as religious institutions but rather as *foreign* NGOs, requiring them to meet a host of new conditions in order to continue to operate, including a lengthy and complex application process. The Provisional Order required all churches existing before October 1994, as well as any church that wished to build subsequently to then register with the Commissioner of Social Planning within 60 days of the issuance of the order. The Commissioner has ultimate authority to accept or reject any application. The request is then forwarded to Minister of Social Affairs for his approval. The decree also requires that churches submit annual accounts statements, hold annual meetings and maintain a list of members and elected officers. If churches do not meet and maintain these conditions, the government has the right to close them down and seize their assets. For example, the Minister could cancel the registration of a church if its membership dipped below 30.<sup>136</sup>

Numerous churches and church properties have been bulldozed or confiscated on the grounds of not fulfilling some of these rigid requirements, or of any other pretext supplied by Sudanese authorities. In June 1999, the government served eviction notices on the Episcopal bishop and all other church personnel of the Episcopal diocese in Omdurman, and ordered them to vacate the headquarters. After ecumenical demonstrations, the government returned the headquarters.<sup>137</sup> Government authorities confiscated the Catholic Club in Khartoum. In some areas, such as the province of Damazin, Christian preaching has been outlawed altogether.<sup>138</sup>

The government also intimidated and harassed Christian leaders critical of the regime by charging them with both ordinary and security-related crimes. For example, in 1998, a military court tried Fr. Hilary Boma and Fr. Leno Sebit, chancellor of the Archdiocese of Khartoum, along with 24 others for “conspiracy and sabotage.” The government released Boma and Sebit in December 1999.

Sudanese leaders maintain that the presence of prominent Christians (including southerners) in the government and the nonapplication of *Shariah* in the south is sufficient evidence that discrimination or persecution of Christians does not exist.

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<sup>136</sup> UN Special Rapporteur on Religious Intolerance, *Implementation of the Declaration*, November 11, 1996, ¶ 59.

<sup>137</sup> Abel Alier, interview with Commission staff, U.S. Commission on International Religious Freedom, Washington, D.C., February 8, 2000.

<sup>138</sup> USCIRF, *Hearing on Sudan* (Bíró testimony), 29.



Moreover, to demonstrate his alleged openness, Turabi convened a number of “dialogues” and conferences about tolerance and coexistence. These, however, were subsequently denounced or played down by Sudanese Christian leaders.<sup>139</sup>

*Traditional-Indigenous Beliefs.* Sudanese regimes, past and present, have made no secret of their designs to eventually integrate the southern populations through a systematic program of Islamization. Differences between the current military regime and previous governments, thus are in degree rather than substance. The current government of Sudan, like all those before it, does not recognize the legitimacy of traditional-indigenous beliefs and views the south largely as a “blank slate” to be converted to Islam.<sup>140</sup> The regime has sought to eliminate traditional-indigenous religions, particularly in the “frontier zones” bordering the south such as the Nuba Mountains and the Ingessana Hills.

#### 4. Persecution of Muslims

Muslims in Sudan are not immune to the religious oppression of the Islamist regime. The government of Sudan violates the religious freedom rights of Muslims in Sudan primarily in two ways. The first is through the compulsory enforcement of Muslim religious observance *as interpreted by the government*. As many Muslim critics point out, despite *Quranic* injunctions against “compulsion in religion” (Quran 2:256), in many instances the government has made otherwise personal religious observances, such as daily prayers and fasting, compulsory. For example, government employees are required to attend congregational prayers and women are not given the option of whether or not they choose to wear the Islamic head scarf (*hijab*).<sup>141</sup>

The regime has thus sought to monopolize the discourse on Islam to the exclusion of all other views. Friday sermons (*khutbas*), for example, must first be vetted by a government commission. Imams who refuse to comply are prevented from preaching. The regime pressures Muslim preachers (*imams*) to preach loyalty to the regime and they may be replaced, harassed, or otherwise ill-treated if they refuse to do so. The Special Rapporteur cites several examples of local imams whom government officials sacked, including Shaykh Awad Jalal of the Shaykh Mustafa Amin Mosque,

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<sup>139</sup> Lesch, *Sudan*, 141.

<sup>140</sup> See Badal, “Religion and Conflict,” 263, 267.

<sup>141</sup> Lawyers Committee for Human Rights, *Beset by Contradictions*, 23. See also Julie Flint, “In the Name of Islam,” *Africa Report* (May-June 1995): 34-37, 37.

Shaykh Mustafa Khalifa of the Hajj Idriss Mosque, Shaykh Jaafar Sherif of the Shams Mosque, and Shaykh Muhammed Nur of the Port Sudan Mosque.<sup>142</sup>

Second, the Sudanese government targets Muslim groups and “sects” who are seen as part of the military and political opposition to the government. These include traditional sectarian movements such as the Khatimiyya, Ansar, Ansar al-Sunnah, and Samaniyya, as well as Muslim communities in the “frontier zones” (Nuba Mountains, Darfur, Red Sea, and Ingessana) who are either suspected of collaborating with SPLA rebels or of practicing a form of Islam that is not deemed to be “pure.”<sup>143</sup>

The current Islamist government of Sudan has particularly attacked the Khatimiyya and the Ansar, which are linked to the banned Democratic Unionist Party (DUP) and (until recently) Umma Party respectively. During the past few years, the DUP and Umma have been the two largest Muslim opposition movements.<sup>144</sup> The Special Rapporteur for Religious Intolerance cites a number of examples of how various Muslim groups are subjected to restrictions on freedom of movement and campaigns of harassment and intimidation by Sudanese officials. The Ansar movement, under the leadership of Sadiq al-Mahdi of the Umma Party, has borne the brunt of these abuses. These include the arrest of Sadiq, imam of the Ansar, along with more than 200 Ansar leaders, on charges of “subversive activities,” attempted assassination of Sadiq by government operatives, and the routine harassment of Ansar imams, including detaining them without charge.<sup>145</sup>

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<sup>142</sup> UN Special Rapporteur on Religious Intolerance, *Implementation of the Declaration*, November 11, 1996, ¶ 110.

<sup>143</sup> According to Abdelfattah Amor, the Special Rapporteur on Religious Intolerance, it is the official policy of the Sudanese to impose “its truth regarding Islam on an erroneous local version of Islam,” UN Special Rapporteur on Religious Intolerance, *Implementation of the Declaration*, November 11, 1996, ¶ 116.

<sup>144</sup> In addition to posing challenges to the political hegemony of the Islamists, both the Khatimiyya and the Ansar are rooted in Sufism, Islamic mysticism, and are philosophically in opposition to the NIF. The NIF and its parent organization the Muslim Brotherhood are of the Salafi orthodox trend that is hostile to both traditionalism and mysticism.

<sup>145</sup> UN Special Rapporteur on Religious Intolerance, *Implementation of the Declaration*, November 11, 1996, ¶ 128.

The Sudanese government targets Muslim groups for religious reasons as well, particularly those who do not acquiesce to the regime's virtual monopoly on the interpretation of Islam. All other views are seen as illegitimate and subject to attack, violent or otherwise. These include the Sufi movements described above – the Ansar, the Khatimiyya and others<sup>146</sup> – as well as Muslim communities who practice what the regime views to be “an erroneous local version of Islam,” such as the Muslims of the Nuba. The 1993 apostasy *fatwa* granted government forces license to attack Muslims of the Nuba at will and the regime's forces have destroyed or desecrated numerous mosques and Muslim institutions. Attacks on Muslims in the Nuba Mountains, whether by government aerial bombardment or by gangs acting on behalf of the regime, became so common that many Nuba leaders believe that the regime has attacked more mosques than it has churches.<sup>147</sup>

The UN Special Rapporteur on Religious Intolerance also received reports about the destruction and desecration of Muslim institutions and objects, including copies of the *Quran*, and has noted that places of worship of various Sufi brotherhoods have been raided, resulting in their desecration and/or confiscation by police or military personnel.<sup>148</sup>

## 5. The Special Case of the Nuba

The government of Sudan's policy toward the people of the Nuba Mountains contradicts the over simplification about the civil war being simply one between north and south or between Muslims and Christians. The Nuba Mountains are in the north (southern Kordofan), and the region's 1million inhabitants are roughly evenly divided among Islam, Christianity, and traditional religions. Visitors to the Nuba Mountains have long observed the remarkable harmony that exists among the indigenous believers of the different faiths.<sup>149</sup> The Muslims, Christians, and other inhabitants now generally see themselves as united against the hostile regime in Khartoum that bombs their

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<sup>146</sup> The Republican Brotherhood, whose leader Mahmoud Muhammad Taha was executed by the Numeiri regime in 1985, has been banned ever since and is currently underground.

<sup>147</sup> African Rights, *Facing Genocide*, 293.

<sup>148</sup> UN Special Rapporteur on Religious Intolerance, *Implementation of the Declaration*, November 11, 1996, ¶ 118 and 119.

<sup>149</sup> Report of the [UN] Interagency Assessment Mission, *Nuba Mountains* (1999), 8.

villages and depopulates their hills.

Prior to 1989, the people of the Nuba had an uneasy relationship with the governments in Khartoum and the southern rebels. To the extent that there was an uneasy truce between the Nuba people and the government, it ended within months after the Bashir coup. African Rights, an NGO, reported that between 1989 and 1991, “scores of villages were burned and thousands of villagers killed in joint army and militia assaults . . . .”<sup>150</sup> The government then launched a brutal and indiscriminate campaign against all inhabitants of the mountains in January 1992, when it promoted a declaration of *Jihad* in the Nuba.<sup>151</sup> Since that time, all Nubans and their institutions, regardless of faith, became legitimate targets.

Large numbers of Nuba, perhaps as many as one-third of the population, have been uprooted and forcibly relocated to more-desolate and less-fertile areas. Meanwhile, Christian Nuba, and those who follow traditional-indigenous beliefs, are subjected to intensive Islamization in the so-called “peace villages.” In addition to a massive “relocation” scheme, Sudanese authorities have sought to eradicate the existing social, economic and religious order in the Nuba Mountains and to replace it violently with its own, while appropriating Nuba lands for economic and development purposes.<sup>152</sup>

Attacks on Nuba villages by government forces are carried out under the pretext of “national security,” which gives Sudanese officials the religious and political pretext to carry out blanket attacks on all those suspected of providing aid, material or otherwise, to the rebels – including attacks on civilians. Vast numbers of Nuba have been killed – several hundred thousand according to one expert.<sup>153</sup> In fact, attacks on civilians have become a mainstay of Khartoum’s war strategy, in the Nuba Mountains and elsewhere, and continue today. Many Nuba of all faiths have resisted northern domination and exploitation by joining the ranks of the SPLA. In response, in 1992, the government conveniently secured a *fatwa* declaring any Muslim who joins the rebels as an apostate and the government of Sudan has justified attacks on Muslims, such as

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<sup>150</sup> African Rights, *Facing Genocide*, 7.

<sup>151</sup> For a discussion of the *fatwa*, see pp. 17-18 above.

<sup>152</sup> For the most thorough documentation of the attack on the peoples of the Nuba Mountains, see Burr, *Quantifying Genocide*, 20-34.

<sup>153</sup> *Ibid.* 11.

those cited above, on this basis.

Nuba Muslims, however, remain defiant. One local *imam* (Muslim leader) described his feelings in the aftermath of a government attack that destroyed his mosque in 1995:

It is the first time the Government has burned a mosque in Kuchama, both East and West. This will not discourage us to continue preaching Islam. Many of us had enough Islamic education. The government consider us rebel Imams and say we don't know Islam. They pretend to know Islam better than us because they are Arabs and Islam came to them first. However, I am convinced that many of us know Islam better than most of their Imams in the North. . . . I am sure there is nothing new I can learn from their training except hypocrisy and lies.<sup>154</sup>

During a February 15th hearing on Sudan before the Commission, Roger Winter of the United States Committee for Refugees testified:

When I visited the Nuba Mountains some time ago, I was able to interview Muslim clerics and individual Muslims who were able to talk about attacks by government forces on mosques and the destruction of the Koran and other religious publications, because they were not the right kind of Muslims. So I want to try to be clear. There is a hostility toward non-Islam by the National Islamic Front, but there is also a clear hostility on the part of the National Islamic Front to brands of Islam that are not as extreme as they are.<sup>155</sup>

The motives behind the government's massive effort to depopulate the Nuba Mountains of their native inhabitants reflect not only hostility toward those who fail to adhere to the government's ideological agenda. Millard Burr observed that "the underlying rationale seemed economic in nature: as Nuba abandoned their land, it was claimed by government satraps who sought to introduce large-scale mechanized agriculture."<sup>156</sup> The government blocked trade in and out of the Nuba Mountains, as well as UN relief aid and continued its attacks on villages.

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<sup>154</sup> African Rights, *Facing Genocide*, 294-95.

<sup>155</sup> USCIRF, *Hearing on Sudan* (Winter testimony), 261-62.

<sup>156</sup> Burr, *Quantifying Genocide*, 23.

#### D. Peace Efforts

Since the civil war was reignited in 1983, largely as a result of the abrogation of the 1972 Addis Ababa Accord, there have been several unsuccessful attempts at bringing their parties to a negotiated settlement.<sup>157</sup> Over the next two years, other forums continued to bring rebel and government negotiators together, however, the Sudanese peace process did not bear fruit until 1993 when the parties came together in Nairobi under the auspices of the Intergovernmental Authority for Drought and Development (now IGAD).<sup>158</sup> One year after it began, the IGAD process made an important breakthrough. On May 20, 1994, Khartoum and the two main rebel factions, SPLA/M and SPLA/M-United, signed a Declaration of Principles (DOP), which all the parties agreed should constitute the basis for further negotiations.<sup>159</sup>

Under IGAD's DOP, both parties agreed that "a military option cannot bring lasting peace and stability" to Sudan, and resolved to arrive at "peaceful and just political solution." Moreover, the DOP, for the first time, recognized that the "right of self-determination of the people of South Sudan to determine their future status through a referendum must be affirmed." The agreement also acknowledged Sudan as "a multi-racial, multi-ethnic, multi-religious and multi-cultural society" and that "[f]ull recognition and accommodation of these diversities must be affirmed."

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<sup>157</sup> By the early 1990s, many of Sudan's neighbors became increasingly concerned over the potential implications of the ongoing Sudanese civil war. The first meeting between the SPLM and the NIF regime took place in Addis Ababa in August 1989 failed. Former President Jimmy Carter brought the parties together again in December 1989 in Nairobi, and talks once again faltered on the issues of the implementation of *Shariah* and the formation of a national unity government. Steven Wöndu and Ann Lesch, *Battle for Peace in Sudan: An Analysis of the Abuja Conferences 1992-1993*, (2000), 15. Talks held in Abuja, Nigeria in May/June 1992 and again in April/May 1993 also produced little in the way of agreement. While the Abuja conferences led to agreement on the nature of Sudan as a multiethnic state in which national identity is based on citizenship, the government and rebels deadlocked on how such a framework would be guaranteed by law and on the SPLM's demand for a secular constitution. *Ibid.*, 172-3.

<sup>158</sup> IGAD is a consortium of East African states aimed principally at coordinating regional development and humanitarian efforts.

<sup>159</sup> For the full text of the IGAD Declaration of Principles, see Sudan Appendix II below.

Since that time, the government of Sudan has remained ambivalent about IGAD and the DOP. The government resisted attempts to resume negotiations and used its deteriorating relations with three IGAD members (Eritrea, Ethiopia, and Uganda), to justify its claim that IGAD was no longer a viable negotiating mechanism.<sup>160</sup> At the same time, the government pursued its own policy of “peace from within” – a policy that would allow the regime to split both southern and northern elements of the opposition through co-optation and largesse, while continuing its military offensive against the SPLA (Mainstream). Sudanese authorities have pursued this strategy with relative success to this day. President Bashir did not formally accept the IGAD Declaration of Principles as the basis of negotiations until July 1997, but stipulated that he did not consider them to be binding.<sup>161</sup> Meanwhile, IGAD had established a “Partners Forum” consisting of Australia, Britain, Canada, Italy, Norway and the United States, to bring political and financial assistance to the IGAD process.

Just before the latest IGAD talks held on January 15, 2000, John Garang noted that he remained hopeful about achieving a peaceful solution but added that implementation of *Shariah* remained a key stumbling block. “On the issue of religion and state, it is clear that we cannot agree on this issue. They are not going to abandon *Shariah*, and we are not going to accept to be governed by *Shariah*,” Garang told Kenyan television, and recommended instead a “confederate arrangement.”<sup>162</sup> Following the talks, however, it was unclear if and whether progress has been made.<sup>163</sup> There were also conflicting reports about whether or not the government had agreed to the SPLA/M’s longstanding demand for the separation of religion and state.<sup>164</sup>

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<sup>160</sup> Wöndu and Lesch, *Battle for Peace in Sudan*, 157.

<sup>161</sup> *Europa World Year Book*, 3304.

<sup>162</sup> “SPLM For Peaceful Solution but ‘*Shariah*’ Key,” Africa News Service, January 7, 2000.

<sup>163</sup> There were some indications by sources close to the negotiations that “substantial” agreement between the parties had been reached. It was reported, for example, that the government finally agreed to the borders of the south. The issue of the separation of religion and state remained contentious, however.

<sup>164</sup> Remarks by Sudan’s First Vice President Ali Osman Muhammed Taha on February 15, 2000 that the government was prepared to negotiate the separation of religion and state were subsequently disavowed nine days later by President Bashir. See Agence France-Presse, “Sudanese president pledges to stick to Islamic law,” February 24, 2000.

Despite consensus among most international players, in the region and beyond, as well as among independent observers, that IGAD remains the best hope for a negotiated settlement to the Sudanese civil war, the process is beset by a series of problems. First, there is concern that IGAD has neither the means nor the political will to have an effective peace-making role in Sudan.<sup>165</sup> Divergent views among the combatants concerning the most suitable forum for negotiations further complicate the peace process. The Sudanese government, for example, believes that the IGAD countries are biased in favor of the SPLA/M.<sup>166</sup> Meanwhile, the SPLA/M, while formally acknowledging the importance of Egypt's role, prefers Nairobi to Cairo. Moreover, the northern opposition, which remains outside the IGAD process, has gravitated toward their Arab neighbors, Egypt and Libya. There is currently talk, however, of bringing the northern parties into the IGAD process and coordinating IGAD and Egyptian-Libyan peace initiatives.<sup>167</sup>

In September 1999, Egypt and Libya offered their own peace initiative, calling for an immediate cease-fire and the formation of a preparatory committee in anticipation of a final peace agreement. As the largest Arab state and a primary interlocutor throughout the Arab region, Egypt in particular seeks to protect what it views as critical geostrategic interests in Sudan and is concerned by its inability to join the IGAD process. Unlike other Nile valley countries, the Nile is Egypt's sole source of water and it has a keen interest in protecting its strategic and security interests in the river. Egypt also has considerable influence with the northern opposition groups, particularly the DUP. For these reasons, Egypt strongly opposes southern secession or even confederation.<sup>168</sup> For its part, Libya has sought to expand its role in Africa and

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<sup>165</sup> IGAD is racked by internal regional conflicts. Ethiopia and Eritrea, for example, are embroiled in their own war. Meanwhile, local interventions by one state in the affairs of another, primarily in the form of support for insurgent movements within neighboring states, remain a hallmark of east African regional politics.

<sup>166</sup> Oxford Analytica Briefs, "Sudan: Peace Complications," September 14, 1999.

<sup>167</sup> On January 4, 2000 Egypt and Libya issued a joint communique stressing the importance of coordinating between IGAD and the Egyptian-Libyan initiatives. Also, Dr. John Garang addressed the issues of bringing both the NDA and the Egyptian-Libyan initiative in line with IGAD during his opening remarks before the March 10, 2000 NDA conference in Asmara.

<sup>168</sup> Oxford Analytica Briefs, "Peace Complications."



maintains close ties to Sadiq al-Mahdi's Umma Party. Moreover, there is concern in Libya that Sudan's new oil trade may eventually compete with its own.<sup>169</sup>

## E. Conclusion

The Sudanese government practices a "policy of terror" against its own people. By repeatedly bombing civilian targets – including hospitals and humanitarian relief centers – it has demonstrated beyond question a brutality that has no justification in a civilized world. Despite this worsening tragedy, the international community has done little to bring about a resolution to the conflict. Rather than expressing outrage at the abuses occurring in Sudan, the international community now appears content to ignore the observations of UN Special Rapporteurs, *Médecins Sans Frontières*, the Harker committee, the UN's World Food Programme, religious groups, human rights groups, and other objective international observers.

With its new oil revenues, the Sudanese government will have even greater resources to perpetuate attacks on its own people. While the government of Sudan recently has been on a "charm offensive" with its neighbors, there is no evidence that it has lessened its bombing offensive on civilians.

Although the United States supports the IGAD process, contributes almost \$ 100 million per year toward humanitarian relief in Sudan, and has imposed a series of economic sanctions, it nevertheless did far more in the Balkans where the humanitarian crisis – while severe – was not of the same magnitude as that of Sudan. The United States should use its moral and political influence to galvanize the international community to stop the brutal actions of the government of Sudan.

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<sup>169</sup> Ibid.



## SUDAN APPENDIX I:

### Reported Bombings of Civilian Targets During the First Quarter of 2000

Date	Incident	Location	Casualties	Reported by
Feb. 8	6 bombs dropped on Holy Cross School	Upper Kaouda (Nuba mts.)	14 children, 1 adult killed (17 children injured)	AP (2/8), Reuters (2/8), BBC News (2/12), Religion Today (2/15), Xinhua (2/22), Calgary Sun (3/4), Toronto Sun (3/5)
Mar. 1	10 bombs dropped on Samaritan Purse hospital	Lui	AP: 3 killed (6 injured) Calgary Sun: 2 killed (12 injured)	AP (3/3), Toronto Sun (3/5), Calgary Sun (3/7), Reuters (3/7), Christianity Today (3/24)
Mar. 6	2 bombs dropped on Concern Worldwide relief agency	Yirol (250 km NW of Juba)	unconfirmed reports of 2 killed	Calgary Sun (3/7)
Mar. 7	15 bombs dropped on Samaritan Purse hospital and village	Lui	no casualties reported	Christianity Today (3/24)
Mar. 22	2 bombs dropped near Samaritan Purse hospital	Lui	1 girl, 1 man injured	Christianity Today (3/24), AP (3/27)
Mar. 23	10 bombs dropped near Samaritan Purse hospital	Lui	6 injured (2 critically)	Christianity Today (3/24), AP (3/27)
Mar. 24	8 bombs dropped on displaced persons camp	Kotobi		AP (3/27)
Mar. 25	8 bombs dropped on hospital in Tali	Tali (80 mi. north of Juba)	No details of casualties but town was evacuated	AP (3/27)
Mar. 20-27	Unknown number of bombs dropped	in Kaya and Morobo towns (on Ugandan border)		AP (3/27)

## **SUDAN APPENDIX II:**

### **Inter Governmental Authority for Development Declaration of Principles May 4, 1994 (Nairobi)**

We, Representative of the Government of the Republic of the Sudan (hereinafter referred to as the GOS) the Sudan People's Liberation Movement/Sudan People's Liberation Army and Sudan People Liberation Movement/Sudan People's Liberation Army - United (herein after referred to as the SPLM/SPLA and SPLM/SPLA-Recalling the previous peace talks between the Government of the Sudan on the one hand and the SPLM/SPLA and SPLM/SPLA-United on the other, namely Addis Ababa in August 1989, Nairobi in December 1989, Abuja in May/June 1992, Abuja in April/May 1993, Nairobi in May 1993 and Frankfurt in January 1992.

Cognizant of the importance of the unique opportunity afforded by the IGAD Peace Initiative to reach a negotiated peaceful solution to the conflict in the Sudan.

Concerned by the continued human suffering and misery in the war affected areas.

Agree on the following Declaration of Principles (DOP) that would constitute the basis for resolving the conflict in the Sudan:

1. Any comprehensive resolution of the Sudan conflict requires that all parties to the conflict fully accept and commit themselves to the position that:

1.1 The history and the nature of the Sudan conflict demonstrate that a military solution can not bring lasting peace and stability to the country.

1.2 A peaceful and just political solution must be the common objective of the parties to the conflict.

2. The right of self-determination of the people of South Sudan to determine their future status through a referendum must be affirmed:

3. Maintaining unity of the Sudan must be given priority by all parties provided that the following principles are established in the political, legal, economic and social framework of the country:

3.1 Sudan is a multi-racial, -ethnic, -religious and multi-cultural society. Full recognition and accommodation of these diversities must be affirmed.

3.2 Complete political and social equalities of all peoples in the Sudan must be guaranteed by law.

3.3 Extensive rights of self-administration on the basis of federation, autonomy, etc. to the various peoples of the Sudan must be affirmed.

3.4 A secular and democratic state must be established in the Sudan. Freedom of belief and worship and religious practice shall be guaranteed in full to all Sudanese citizens. State and religion shall be separated. The basis of personal and family laws can be religion and customs.

3.5 Appropriate and fair sharing of wealth among the various people of the Sudan must be realized.

3.6 Human rights as internationally recognized shall form part and parcel of this arrangement and shall be embodied in the constitution.

3.7 The independence of the Judiciary shall be enshrined in the constitution and laws of the Sudan.

4. In the absence of agreement on the above principles referred to in 3.1 to 3.7 the respective people will have the option to determine their future, including independence, through a referendum.

5. An interim arrangement shall be agreed upon, the duration and the tasks of which should be negotiated by the parties.

6. The parties shall negotiate a cease-fire agreement to enter into force as part of the overall settlement of the conflict in the Sudan.

### SUDAN APPENDIX III:

#### The Political, Military, and Security Actors in Sudan

The complex web of competing local, parochial, national, and even international interests has produced numerous political parties, factions, and paramilitary groups in both the North and the South. The situation is further complicated by constantly shifting alliances and ongoing internecine warfare. Sudan's political culture is characterized by absolutism and exclusivity, as well as by fractiousness and instability. Furthermore, the military, which has the last word in Sudanese political affairs, frequently manipulates Sudanese political parties through co-optation and by playing them off one another. Such is the environment in which most Sudanese political movements operate: those in power do not readily share it and those who are not often find themselves banned, jailed or otherwise suppressed.<sup>170</sup> Likewise, many southern factions alternate between fighting government forces and joining them. Both the government and the opposition, therefore, consist of groups and factions from the North and the South, Muslims and non-Muslims, Arabs and non-Arabs.

#### 1. Northern Actors

##### *a. The National Islamic Front (NIF)*

The National Islamic Front (NIF) is the most powerful of the northern parties. The NIF, which formally came into existence after the 1985 coup against Numeiri, grew out of the Muslim Brotherhood movement that began in Egypt in the late 1920s and later spread throughout the Arab world. The goal of the Muslim Brotherhood in Sudan was the establishment of an Islamic state based on *Shariah*. The Muslim Brotherhood in Sudan represented the smallest of Sudan's three main religio-political movements, in terms of its grassroots base and appeal.<sup>171</sup> Particularly because of its organizational skills and recruitment of educated young people, it gained a disproportionate influence among the elite and affluent segments of northern Sudanese society. It transcended the narrower sectarianism of the more traditional political parties such as Umma and the

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<sup>170</sup> Many northern Sudanese leaders, including both Sadiq al-Mahdi and Turabi, have made the journey from jail to government, and back again.

<sup>171</sup> The other two being the Ansar, represented by Sadiq al-Mahdi's Umma Party, and the Khatimiyya Sufi order that dominated the Democratic Unionist Party (DUP).

DUP.<sup>172</sup> Moreover, the Brotherhood's superior organization made it a political force far stronger than its numbers might suggest.

In the 1960s, the Brotherhood reconstituted itself into a political party, the Islamic Charter Front (ICF), which in 1965 won only three seats in parliament. The Brotherhood and the ICF were banned in the early 1970s and later returned to politics following Numeiri's 1977 "national reconciliation." Under the leadership of ICF's secretary general, the Western-educated and well-spoken Turabi, the Muslim Brotherhood began to court the regime of Ja'far al-Numeiri and lay the groundwork for its political ascent. Numeiri appointed Turabi Attorney General and he became the primary impetus behind the September Laws of 1983. For Numeiri, the Brotherhood was a way to keep his old political rivals, the Umma Party and the DUP, at bay while giving him the Islamic legitimacy that was increasingly necessary in Sudan's political climate. Turabi's ICF was later transformed into the National Islamic Front (NIF). Buoyed by its 1986 electoral showing in which it won the third-largest number of seats, the NIF began to preparing itself to take power. The NIF had by then already gained a foothold in the army. On June 30, 1989 a small group of army officers led by Lt. Gen. Omar al-Bashir, a longtime disciple of Turabi, overthrew Numeiri in a bloodless coup and established an Islamist government dominated by Turabi and the NIF.

#### ***b. Northern Parties: Democratic Unionist Party and Umma Party***

The major northern opposition movements – the Khatimiyya and Ansar, which are linked respectively to the Democratic Unionist Party (DUP) of Muhammed Uthman al-Marghani and the Umma Party of Sadiq al-Mahdi – together with the Muslim Brotherhood, comprise the three major political trends in the North. The Khatimiyya and the Ansar are the oldest and most established religio-political movements in Sudan. As movements based in the Sufi tradition that is prevalent throughout Sudan, they have traditionally been viewed with antipathy by the Muslim Brotherhood and its later incarnation, the National Islamic Front (NIF).<sup>173</sup> Meanwhile, the only other major northern political force in Sudan, whose popular base consists primarily of trade unionists, is the Sudanese Communist Party (SCP).

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<sup>172</sup> Deng, *War of Visions*, 18.

<sup>173</sup> Francis Deng observes that the "NIF tends to attract the educated young people, many of whom it lures early through scholarships and promises of career opportunities. It therefore enjoys an intellectual and professional appeal that supersedes the sectarian basis of influence among the traditional political parties, the Umma and the Democratic Unions party (DUP) . . . ." Deng, *War of Visions*, 18.

*c. Northern Fighting Groups: Popular Defense Forces and the Murahalin*

In addition to the regular armed forces, the NIF regime has mobilized a number of tribal militias and paramilitary groups into a parallel force called the Popular Defense Force (PDF).<sup>174</sup> These deputized militias, such as the Arab *murahalin*, originally formed as responses to local tribal conflicts, were now used by the regime as an integral component of their war strategy.<sup>175</sup> Militias have severely undermined human rights in Sudan, through their involvement in massacres and the reemergence of slavery and slavery-like practices, and have contributed to the further militarization of Sudanese society and the breakdown in law and order in vast portions of the country.

The *murahalin* were not drawn into the national conflict until 1985, following that year's massive SPLA offensive and the onset of famine, new political and

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<sup>174</sup> The idea of a popular defense force that would act independently of the Sudanese Armed Forces was not new – nor was it conceived by the NIF. In 1988 then Prime Minister Sadiq al-Mahdi abandoned his goal to create a Popular Defense Force only after strong opposition from high ranking military officers. See Lesch, *Sudan*, 134-36. Moreover, the political origins of the *murahalin*, which constitute the core of the PDF, may be traced back to the Mahdiyya in which the Baggara Arabs formed a large part of the Mahdist army. See also de Waal, "Comments on Militias," 148.

The PDF is comprised principally of four groups: (1) pre-existing Arab tribal militias (*murahalin*); (2) young, zealous NIF volunteers consisting mainly of students and professionals; (3) conscripted students and civil servants (after December 1990 all students, civil servants and teachers were required to undergo compulsory military training); and (4) forcibly enrolled teenagers (there are numerous reports of youths seized off the streets). Lesch, *Sudan*, 135-6.

<sup>175</sup> Tribal raids and marauding have been common in Sudan for many years, both between and among Arab and African tribes, and most modern northern militias emerged in response to local tribal conflicts. For example, the area on the Darfur-Bahr al-Ghazal border, where Arab Baggara tribes and various Dinka tribes compete for water and grazing lands, has been a particular source of conflict. Meanwhile, in Kordofan Arab Misiriya-Ngok Dinka relations have alternated between times of cooperation enmity, primarily because of the existence of traditional dispute-settling mechanisms. Similar situations exist throughout the region in western Kordofan, southern Darfur and northern Bahr al-Ghazal. In addition to customary tribal mechanisms of resolving inter-tribal clashes, the Government of Sudan often sponsors local conferences to help resolve the most violent of these disputes. However, the government has not intervened in Baggara-Dinka disputes since 1983, thereby allowing the conflict to escalate. See de Waal, "Comments on Militias," 146.



economic incentives emerged for the  *Murahalin* to step up their raids into the south.<sup>176</sup> In addition, the influx of modern weapons brought in by returning Ansar exiles greatly enhanced their military capabilities. Sudanese authorities soon took note of the potential benefits of engaging the  *Murahalin* and in mid-1985, the military role of  *Murahalin* was formalized for the first time when General Fadlallah Burma Nasir of the Transitional Military Council met with  *Murahalin* leaders in al-Muglad.<sup>177</sup>

Thereafter, the military in southern Darfur and Kordofan cooperated closely with the  *Murahalin*. It is certain that the army and the militia shared their plans; it is likely they that they cooperated in the field and that the army ammunition to the raiders; it is possible that the army also supplied weaponry and that soldiers themselves participated in the raids.<sup>178</sup>

It was not until the NIF-backed coup passed the Popular Defense Force Act (1989), however, that the Government of Sudan officially recognized several tribal militias forces and authorized them to act on its behalf. The PDF was born out of the NIF's (and that of Sadiq al-Mahdi's Ansar before him) deep mistrust of the of the army based on their belief that "they could not rely on the national army to serve their interests, and so had set up an alternative armed force, with more restricted loyalties."<sup>179</sup> The NIF had set out to infiltrate the armed forces in the mid-1980s and by 1997, the process of transforming the armed forces and displacing its officers with those of the PDF was largely complete.<sup>180</sup> Service in the PDF is mandatory for all government

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<sup>176</sup> For a detailed analysis of the social, economic, political and military factors that have led to the rise of both northern and southern militias and paramilitary groups, see de Waal, "Comments on Militias," 144-55.

<sup>177</sup> de Waal, "Comments on Militias," 147.

<sup>178</sup> de Waal, "Comments on Militias," 147. Despite the formal coordination between the  *Murahalin* and the army, however, relations between the two were not always smooth and clashes between the two occasionally took place. Ibid., 148.

<sup>179</sup> de Waal, "Comments on Militias," 144.

<sup>180</sup> Immediately after seizing power in 1989, the NIF began to purge the military of its opponents and Turabi repeatedly expressed his desire that the army would be "dissolved" into the PDF which would mobilize the masses behind Jihad. In October 1993 President Omar al-Bashir called the PDF "the legitimate child of the armed

employees and all high school graduates are required to obtain a certificate of completion of PDF training in order to enroll in the university or to leave the country.<sup>181</sup>

Armed and authorized (though not paid) by the regime, PDF forces and independent *murahalin* militias have been used in the Nuba Mountains and the Darfur-Bahr al-Ghazal region to terrorize and intimidate the local populations. In the Nuba mountains, the PDF help carry out the government's plan of "resettling" Nuba villagers and are charged with guarding the so-called "peace villages." In some cases, attacks are carried out on the pretext that locals were providing support for the rebels, while others were aimed simply at displacing the indigenous inhabitants from their land in order to settle Arab tribes in these more fertile areas.<sup>182</sup> In the western provinces, meanwhile, the *murahalin* of the Baggara Arab tribes frequently raid Dinka villages in southern Darfur and northern Bahr al-Ghazal for war booty which often includes human beings. According to Human Rights Watch, the government has armed the *murahalin* as part of its counter insurgency against the SPLA which is largely identified with the Dinka tribes of the north:

Thus the tribal militia, often operating with government troops and usually transported into Bahr El Ghazal by military train, raids with impunity civilian Dinka villages, looting cattle and food as well as abducting women and children for use as domestic slaves and sometimes as "wives" or concubines. The abductees are considered war booty, although the *murahaleen* diligently avoid any attacks on military targets and do not attack villages where the SPLA might be present. Their purpose is to abduct and loot, not to risk themselves in combat. Their "war" effort is directed exclusively toward civilians, which is a gross

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forces." Turabi later explained how the transformation of the military helped bring the NIF to power: "changes occurred in the Armed Forces and there was a transition . . . to the Islamic way of thinking, which spread to all enlightened and educated strata. [Therefore] when the Armed Forces took power [in 1989] they declared that they would implement the Islamic laws and tenets." Lesch, *Sudan*, 134.

<sup>181</sup> Abdelmoula, "'Fundamentalist' Agenda," 20.

<sup>182</sup> While many Nuba did in fact join the SPLA ranks and the SPLA has added the Nuba to their list of "marginalized" people whom they defend, the Nuba-SPLA alliance remains largely tactical and many Nuba are as wary of the south as they are of the north. See Verney, *Conflict and Minorities in Sudan*, 35.

violation of international humanitarian law.<sup>183</sup>

The fact that such abuses are carried out by independent or semi-official militia groups, that is, forces other than the Government of Sudan, allows government officials to deny responsibility for them. Nevertheless it is clear that Sudanese authorities are aware of them and have done nothing to stop them. Moreover, as groups sponsored or manipulated by the government and as the sovereign power charged with protecting all of its citizens, the Government of Sudan bears ultimate responsibility for the continuation of all human rights violations carried out by the  *Murahalin* and other militias, including abductions, enslavement, religious coercion, attacks on civilians and other abuses. These militias are likely to remain, however, until the social, political, economic and military incentives that have led their rise are eliminated or dealt with.

## 2. Southern Groups

### a. *The SPLA/SPLM*

In the marginalized south, meanwhile, political activity has revolved around efforts to resist northern cultural, political and economic domination. The most important movement to emerge in the south is the Sudan People's Liberation Movement (SPLM) and its military wing the Sudan People's Liberation Army (SPLA). The SPLM was founded in 1983 by John Garang de Mabior, a U.S.-educated agricultural economist. Unlike the Anya-Nya rebel movement which emerged during the first civil war, the SPLM strongly opposed secessionist tendencies and is, at least rhetorically, committed to the territorial unity of Sudan. The SPLM/A's program is focused instead on the need to create a "New Sudan" based on "the radical restructuring of power at the centre in Khartoum"<sup>184</sup> and in which all Sudanese would have equal rights and status before the law. Garang's movement, therefore, has generally de-emphasized North-South divisions and has articulated a political agenda for Sudan based on a more equitable power-sharing arrangement, fairness in development, sharing of national resources, an inclusive national identity, and the separation of religion and state.<sup>185</sup> Although there is reason to believe that the SPLA's human rights record has improved, there have been violations in the past.

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<sup>183</sup> Human Rights Watch/Africa, *Background Paper on Slavery*.

<sup>184</sup> Badal, "Religion and Conflict in the Sudan," 267.

<sup>185</sup> *Ibid.*

Since 1983, the SPLA has been the principal force resisting the government of Sudan's military activities, particularly in the south. While the SPLA is responsible for committing atrocities, it would be incorrect to suggest that there is a moral equivalence between the magnitude of the human rights violations committed by the government and those by the SPLA. Nevertheless, it should be candidly acknowledged that credible evidence shows that SPLA soldiers and other rebel groups commit serious human rights violations of their own.<sup>186</sup> Similarly, it has thus far failed to establish a judicial system

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<sup>186</sup> In 1998, Human Rights Watch/Africa reported that:

The SPLA continued forced recruitment of underage boys, including those in schools, even in the Nuba Mountains. Civilians protested the taking of their sons. Since 1996 the SPLA permitted UNICEF to engage in family reunification in its territory, including a group of 306 in late 1996. Many children so reunited were originally separated from their families by the SPLA for recruitment purposes.

Six missionaries who complained to the SPLA about forced recruitment of schoolchildren as young as twelve, and their teachers, in Mapourdit were detained in August 1996 and the priest beaten by a local SPLA military intelligence officer. They were not released until the church publicly protested, making international headlines. An investigation was ordered by the SPLA commander-in-chief. The officer responsible was said to have been detained. One year had elapsed, however, with no report and no hearing.

Human Rights Watch, *1998 World Report*, "Sudan: Human Rights Developments" ([http://www.hrw.org/hrw/worldreport/Africa-12.htm#P972\\_267375](http://www.hrw.org/hrw/worldreport/Africa-12.htm#P972_267375) accessed April 29, 2000). By 2000, recruitment of child soldiers continued to be a problem within the SPLA:

Visitors to SPLA areas continued to see armed SPLA youth who looked younger than eighteen. Although UNICEF had a program for demobilization of child soldiers, the SPLA was not known to have demobilized any of the child soldiers in its ranks.

Human Rights Watch, *World Report 2000*, 81.

Human Rights watch also reported that, "[l]ooting and diversion of food continued to be a problem in several SPLA zones," and suspected "that the SPLA

in areas under its control.<sup>187</sup>

The government of Sudan, as discussed above, caused and is causing massive human suffering by restricting OLS from delivering food and other humanitarian assistance to large areas in the south. Again it must be noted that – albeit on a completely different scale – the SPLA also is responsible for obstructing food and humanitarian deliveries to needy people. The OLS, under its operating protocol, does not deliver food to any region of Sudan unless both the government and the SPLA agree, and there have been occasions when the SPLA has not agreed. In addition, the SPLA recently drafted a Memorandum of Understanding (MOU) to which it required NGOs operating within SPLA-controlled areas to sign by March 1, 2000. Although establishing protocols such as the MOU are not unusual – indeed OLS has a protocol as well – the MOU initially caused some of the NGOs operating in SPLA-controlled areas to withdraw their humanitarian aid programs. The U.S. government and Human Rights Watch initially criticized some terms of the MOU and the manner in which it was

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deliberately kept some children in a thin and sickly state to justify continued high levels of relief food the SPLA could divert.” Human Rights Watch, *1998 World Report*, “Sudan: Human Rights Developments.”

<sup>187</sup> In 1999, Human Rights Watch reported:

The SPLA had not instituted a judicial system or any mechanism for civilians to complain about arbitrary actions by local commanders, which ranged from food diversion or looting to forced conscription, rape, and summary execution. Although some commanders showed greater respect for the civilian populations, this appeared to be the result of personality rather than SPLA policy. SPLM reformers complained that SPLM leader John Garang promulgated a constitution by executive order instead of submitting it for SPLM debate and promulgation. An SPLA military intelligence officer, Maj. Marial Nuor, was accused of many summary executions and the detention in 1996 of a priest and nuns. He was court martialed by the SPLA and sentenced to five years – for mutiny – but was not sanctioned for the killings or abductions. People reported detained by the SPLA years ago but never acknowledged remained unaccounted for.

Human Rights Watch, *1999 World Report*, “Sudan: Human Rights Developments.”

imposed.<sup>188</sup> Recently the SPLA and the NGOs have begun to discuss modifying the terms of the MOU.

### ***b. Anti-SPLA Southern Rebels***

Whether the SPLA's rhetoric regarding national unity and its opposition to secession were genuine or merely represent "camouflage for secessionist objectives" is unclear.<sup>189</sup> The issue of secession, nevertheless, became a highly contentious one within the SPLA following the NIF coup and resulted in several important defections from its ranks and the establishment of a number of anti-SPLA factions. In 1991, just as the SPLA had lost its primary benefactor, Ethiopia's Mengistu Haile Mariam, who was overthrown in May of that year, the NIF managed to convince several key southern commanders that it would allow the south to secede if Garang was overthrown.<sup>190</sup> In August 1991 principal SPLM negotiator Lam Akol, Nasir garrison commander Riek Machar and member of the SPLA High Command Gordon Kong Chuol accused Garang of human rights violations, announced that he had been removed, and issued a manifesto calling for secession.

The regime has been able to exploit these divisions, and the constantly shifting alliances – for personal, parochial or political reasons – have brought various southern rebel leaders in and out of alliances with the Khartoum government. Though the regime subsequently backtracked on the issue of secession, it succeeded in getting the new SPLA splinter group, now known as SPLA-United (formerly SPLA-Nasir), to launch attacks on mainstream SPLA forces and SPLA-controlled civilian areas, killing

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<sup>188</sup> Human Rights Watch condemned the MOU, noting that "Hundreds of thousands of civilians in southern Sudan face the cutoff of essential services, including food, because the rebel Sudan People's Liberation Movement/Army (SPLM/A) refused to extend the deadline for negotiations with nongovernmental organizations (NGOs)." Human Rights Watch Press Release, "Sudan Rebels Leaving Civilians in the Lurch: Government Condemned for Hospital Bombing," March 7, 2000 (<http://www.hrw.org/hrw/press/2000/03/sud0307.htm> accessed April 29, 2000). Sudan Researcher Jemera Rone noted: "The SPLA is behaving irresponsibly. It has imposed an artificial and unnecessary deadline that puts many, many civilian lives at risk. . . . The SPLA claims to be the de facto government of the south, but it has not demonstrated any concern for the impact its deadline would have on the civilians in its jurisdiction." Ibid.

<sup>189</sup> Deng, *War of Visions*, 173.

<sup>190</sup> Lesch, *Sudan*, 157.

thousands of mostly Dinka villagers.<sup>191</sup> The Khartoum regime also successfully exploited historical inter-ethnic rivalries in the south, particularly among the Nuer and the Dinka, to its advantage.<sup>192</sup>

An April 1997 Peace Agreement formally brought several renegade rebel leaders, grouped under the umbrella of the South Sudan Defense Forces (SSDF) under the command of Riek Machar, into the Khartoum government. Given the nature of the Khartoum regime and its objectives, however, these alliances were paradoxical and ultimately untenable. For example, among the signatories of that agreement was former Bahr al-Ghazal SPLA commander Kerubino Kuanyin Bol, described as “one of the most unruly of the renegades allied to the National Islamic Front (NIF) regime in Khartoum,”<sup>193</sup> Kerubino cynically exploited his position with both the SPLA and the NIF, apparently motivated by personal ambition. In late 1997 he repeatedly threatened to rejoin the SPLA if the government did not meet his demands for a prominent leadership position in the South Sudan Coordinating Council (SSCC), until a showdown with government troops in January 1998 conducted with SPLA forces ended Kerubino’s flirtation with the regime. Moreover, by February 2000, Riek Machar himself, along with his United Democratic Salvation Front (UDSF), the political wing of the SSDF, resigned his posts as a vice president of the republic and chairman of the SSCC and returned to the bush. Machar accused the government of violating the 1997 Agreement, making important political appointments without his consultation and of launching attacks on his forces in Unity state.<sup>194</sup> Machar’s future plans and whether he will seek to rejoin the SPLA leadership are as yet unclear.

### **3. The National Democratic Alliance (NDA)**

The 1989 coup brought most of the forces aligned against Khartoum, both northern and southern, together under the umbrella of the National Democratic Alliance (NDA). The NDA was established in October 1989 with its headquarters in Asmara, Eritrea, with the aims of overthrowing of the regime, repealing Islamic laws, and

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<sup>191</sup> Lesch & Wöndu, *Battle for Peace*, 22. See also Lesch, *Sudan*, 158-9.

<sup>192</sup> The SPLA is predominantly Dinka while the SPLA-United and other groups, such as Riek Machar’s Southern Sudan Defense Forces, are Nuer dominated.

<sup>193</sup> “Kerubino Gives NIF a Run For Their Money, While SPLA Watches,” *Sudan Democratic Gazette*, February 1, 1998.

<sup>194</sup> Reuters, “South Sudan leader quits all government posts,” February 6, 2000.

establishing a transitional government until democracy could be reinstated. These were to be achieved within the context of Sudanese national unity.<sup>195</sup> During its Conference on Fundamental Issues held in Asmara in June 1995, the NDA adopted provisions upholding human rights, the rule of law, equality of citizenship and religious freedom.<sup>196</sup> Despite the consensual rhetoric, however, deep divisions and contradictions within the NDA remain on the critical questions of the relationship between religion and state and the ultimate resolution of the “southern question.”<sup>197</sup> Both the DUP and the Umma Party, for example, prefer a *Shariah*-based political system over that of a secular one, and are ambivalent on the question of southern self-determination.<sup>198</sup> Moreover, despite their similarities, the two parties are deeply suspicious of one another – suspicions confirmed in late 1999 when Sadiq al-Mahdi and his Umma Party signed an agreement with Khartoum. In the latest round of shifting alliances in Sudan, Umma quit the NDA in March 2000.<sup>199</sup> Southern parties, meanwhile, continue to feel marginalized within the NDA.

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<sup>195</sup> (For the full text of the NDA charter, see <http://www.umma.org/nda/charter.htm> accessed April 29, 2000).

<sup>196</sup> The NDA declaration stated, “The State shall acknowledge and respect religious pluralism in the Sudan and shall undertake to promote and bring about peaceful interaction and coexistence, equality and tolerance among religions and noble spiritual beliefs, and shall permit peaceful religious proselytization and prohibit coercion in religion, or the perpetration in any place, forum or location in the Sudan of any act or measure intended to arouse religious sedition or racial hatred.” UN Special Rapporteur on Religious Intolerance, *Implementation of the Declaration*, November 11, 1996, ¶123.

<sup>197</sup> According to Deng, in the “North, the revivalist Islamic agenda is opposed by both the sectarian political parties and the liberal secularist elements, which joined hands with the SPLM-SPLA in a National Democratic Alliance. Its manifest objective is the overthrow of the regime and the promotion of a pluralistic democracy in which the role of religion remains ambiguously defined but is certain to be more liberal than is now the case.” Deng, *War of Visions*, 21.

<sup>198</sup> Lesch, *Sudan*, 150.

<sup>199</sup> As of late March 2000, Umma was said to be considering forming a “national front” with the Bashir government. Deutsche Presse Agentur, “Sudanese exiled Umma party moves army from Eritrea to Ethiopia,” March 23, 2000.



## CHAPTER TWO: SUDAN ECONOMIC SANCTIONS

### *The Ability of Partners in the Development of the Oil Fields in Sudan to Obtain Capital on the U.S. Market to Further That Development*

In 1997, President Clinton established a program of economic sanctions against the government of Sudan. As described in the preceding chapter, its predatory behavior is being supported in part by revenues from the oil fields in Sudan.

The oil fields are under development by a joint venture – the Greater Nile Petroleum Operating Company Limited (GNPOC). The partners in this venture are: (1) an entity controlled by the government of Sudan, called Sudapet Ltd.; (2) an entity controlled by the government of China, called the China National Petroleum Corporation (CNPC); (3) an entity controlled by the government of Malaysia, called Petronas; and (4) a private corporation chartered by Canada, called Talisman Energy Corporation.<sup>1</sup> CNPC reportedly is a 40 percent owner of GNPOC, and Talisman a 25 percent owner.

This chapter focuses on a narrow aspect of the President's economic sanctions for Sudan, namely, their applicability to attempts by a partner in GNPOC to raise capital on the U.S. market for use in developing the oil fields in Sudan. This section surveys the legal structure of the Sudan sanctions, reports the results of investigation by Commission staff, and summarizes what appear to be the President's current policies respecting such applicability.

#### **A. Legal Structure of the Sanctions**

The Sudan sanctions, which arose out of a mix of constitutional and statutory power, took the form initially of an executive order and implementing regulations. But they have gained greater specificity primarily through interpretations and *de facto* administration by the Executive Branch. As is the case with the President's various programs of economic sanctions, the Sudan sanctions have been shaped almost entirely by the President's conclusions about what will serve the national interest. Neither the executive order nor the implementing regulations went through the notice-and-comment process, nor were they judicially reviewable upon issuance. Judicial review of the

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<sup>1</sup> The term "partner" is used here in a colloquial sense. The Commission staff does not have information sufficient to determine the precise legal standing of the relationship among these four companies.

sanctions *per se* can occur, to the apparently small extent it can at all, only in the course of an enforcement action, such as a criminal prosecution.<sup>2</sup> In short, the Sudan sanctions are a crystallization of foreign policy as set by the Executive Branch under the supervision of the President.

### 1. International Emergency Economic Powers Act

The President's authority to establish economic sanctions arises primarily from the Constitution and the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701 et seq.

Under IEEPA, in order to impose sanctions, the President must first declare that a "national emergency" exists because of an "unusual and extraordinary threat" from a foreign source to the national security, foreign policy, or economy of the United States.<sup>3</sup> Having made such a declaration, the President has extremely broad discretion to "deal with" the threat. In particular, so long as his aim is to "deal with" the threat, he may regulate any transaction by "any person . . . subject to the jurisdiction of the United States" involving any property in which any foreign country or national of that country has an interest.<sup>4</sup> There are exceptions only for personal communications, informational material, and some humanitarian aid.<sup>5</sup>

Furthermore, the President has broad investigatory powers. When he regulates a transaction, he may require those engaging in it to keep records, give reports, and provide documents relating to the transaction.<sup>6</sup>

IEEPA specifies both civil and criminal penalties for violating any order, regulation, or license issued pursuant to its provisions.<sup>7</sup> The civil penalty is \$ 10,000 per violation. On the criminal side, if the violation was willful, the person can be fined

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<sup>2</sup> See, e.g., *United States v. Arch Trading Company*, 987 F.2d 1087 (4<sup>th</sup> Cir. 1993).

<sup>3</sup> 50 U.S.C. § 1701.

<sup>4</sup> *Ibid.* § 1702(a).

<sup>5</sup> *Ibid.* § 1702(b).

<sup>6</sup> *Ibid.* § 1702(a)(2).

<sup>7</sup> *Ibid.* § 1705.

as much as \$ 50,000, or, in the case of an individual, imprisoned for up to 10 years, or both. Furthermore, “any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.”<sup>8</sup>

## 2. Executive Order 13067

The President used his powers under IEEPA to address the Sudan situation by means of Executive Order (EO) 13067.<sup>9</sup> He found that the policies and actions of the government of Sudan posed an “unusual and extraordinary” threat, including (1) “continued support for international terrorism”; (2) “ongoing efforts to destabilize neighboring governments”; and (3) “the prevalence of human rights violations.” He specifically cited slavery and the denial of religious freedom as examples of such violations. To “deal with” that behavior, he imposed various sanctions, including the following:

- A freeze on any government of Sudan property that comes within the U.S. or within the possession or control of a U.S. person; and
- Prohibitions against:
  - The facilitation by a U.S. person of trade in goods, technology, or services to or from Sudan;
  - The performance by any U.S. person of any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in Sudan; or
  - The grant or extension of credits or loans to the government of Sudan by a U.S. person.<sup>10</sup>

The executive order defines the term “U.S. person” to include any individual or entity, such as a corporation, that is “in the United States”, but it does not define what

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<sup>8</sup> Ibid. § 1705(b).

<sup>9</sup> 62 Fed. Reg. 59989 (November 3, 1997).

<sup>10</sup> The executive order also prohibits “any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate [*sic*], any of the prohibitions set forth in this chapter.” EO 13067, § 2(g).

the phrase “in the United States” means.<sup>11</sup> Further, the order defines the government of Sudan to include its instrumentalities and controlled entities. Finally, the order deputizes the Secretary of the Treasury to issue implementing regulations and enforce them.

### 3. Sudanese Sanctions Regulations

The Secretary of the Treasury, through the Office of Foreign Assets Control (OFAC), has issued implementing regulations, 31 CFR Part 538.<sup>12</sup> The regulations closely follow, but nevertheless elaborate on, the wording and structure of EO 13067.<sup>13</sup> Pertinent elements are as follows:

First, at the outset, Part 538 emphasizes that it is “separate from, and independent of, the other parts” in the overall chapter in the *Code of Federal Regulations* devoted to OFAC’s economic sanctions programs. Part 538 explains that “[d]iffering foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter.”<sup>14</sup>

Second, the regulations define the government of Sudan to include any entity that is controlled by or acting on behalf of the government, including any entity so identified by OFAC (*i.e.*, in OFAC’s lexicon, a “Specially Designated National” (SDN)).<sup>15</sup> Pursuant to that authority, OFAC in February 2000 identified GNPOC and Sudapet Ltd. as SDNs.<sup>16</sup>

Third, the regulations affirm that a U.S. person includes any corporation “in the

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<sup>11</sup> See EO 13067, §§ 4(a), (c).

<sup>12</sup> 63 Fed. Reg. 35810 (July 1, 1998).

<sup>13</sup> OFAC issued the regulations directly into final form, without going through a notice-and-comment process. In addition, the preamble to the promulgation contains no significant indication of intent beyond what can be gleaned from the regulations themselves. *Ibid.*

<sup>14</sup> 31 CFR § 538.101.

<sup>15</sup> *Ibid.* § 538.305.

<sup>16</sup> (<http://www.treas.gov/ofac> accessed April 29, 2000).

United States.”<sup>17</sup> However, they do not define that phrase either.

Fourth, the regulations clarify that the term “property” includes “obligations” and “contracts of any nature whatsoever.”<sup>18</sup>

Fifth, by reference to a separate part, the regulations lay out recordkeeping and reporting requirements.<sup>19</sup> They require that “every person engaging in any transaction subject to the provisions of the chapter shall keep a full and accurate record of each such transaction engaged in . . . ,” and to make those records available to OFAC upon demand.<sup>20</sup>

Finally, the regulations carefully give notice of potential penalties for violations. In doing so, they suggest, as does the language of IEEPA, that civil liability turns merely on whether a person has violated a particular prohibition, such that his or her mental state in doing so is of little concern:

A civil penalty not to exceed \$11,000 per violation may be imposed on any person who violates any license, order, or regulation issued under the Act[.]<sup>21</sup>

In contrast, the regulations make criminal liability turn generally on whether the accused acted “willfully” and, in the case of an officer, director or agent, on whether the accused participated in the violation “knowingly.”<sup>22</sup> Beyond that, the regulations point to criminal liability for knowing and willful misrepresentation.<sup>23</sup>

<sup>17</sup> See 31 CFR §§ 538.309, 538.315.

<sup>18</sup> Ibid. § 538.310.

<sup>19</sup> Ibid. § 538.601 (referencing 31 CFR Part 501).

<sup>20</sup> Ibid. § 501.601, 501.602.

<sup>21</sup> Ibid. § 538.701(a)(1).

<sup>22</sup> Ibid. § 538.701(a)(2).

<sup>23</sup> Ibid. § 538.701(c). Specifically, the regulations emphasize that a person can be fined or imprisoned if the person “knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representation or makes or uses any false writing or

#### 4. Executive Branch Interpretations

The Department of the Treasury recently interpreted the Sudan sanctions in response to letters from Congressman Frank Wolf that had raised questions about the ability of CNPC, one of the participants in GNPOC, to make an initial public offering (IPO) of stock in CNPC in the United States. In a response dated December 27, 1999, Treasury agreed that the regulations “would prohibit a CNPC listing *if the offering were for the purpose of raising capital for investments in Sudan.*”<sup>24</sup> In the same breath, Treasury gave the following caveat:

However, the sanctions do not authorize measures of this type against third country governments or entities if there is no prohibited transaction involved, such as dealing in a blocked property interest of the Government of Sudan, a loan or credit to the Government of Sudan, or exportation of goods to Sudan. The Administration in the past has considered proposals to further restrict companies’ listing in the U.S. and *has concluded that such prohibitions would create serious uncertainties about our commitment to open markets and the free flow of capital.*<sup>25</sup>

In a prior response (December 13, 1999) to the same inquiry from Congressman Wolf, Treasury had expressed a similar, but more elaborate view, as follows:

[The EO and the regulations] would not prohibit U.S. persons from making investments in non-Sudanese third country companies doing business in Sudan (or with the government of Sudan), provided that such companies are not owned or controlled by the government of Sudan, or

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document knowing the same to contain any false, fictitious or fraudulent statement or entry.” Ibid.

<sup>24</sup> Letter dated December 27, 1999, from Linda Robertson, Assistant Secretary, Department of the Treasury, to Congressman Frank Wolf (emphasis added). OFAC took a similar position in 1994 in the context of the sanctions against Cuba, saying: “Injecting capital into a company *in a manner supporting its Cuban transactions* is prohibited to persons subject to the jurisdiction of the United States unless those transactions are authorized by the Office of Foreign Assets Control (OFAC) or are exempt from regulation.” Letter dated March 4, 1994, from R. Richard Newcomb, Director, OFAC, to John Kavulich, Kavulich International, Inc. (emphasis added).

<sup>25</sup> Ibid. (emphasis added).

predominantly dedicated to or derive the predominant portion of their revenues from investments, projects, or other economic activities in Sudan.<sup>26</sup>

While these two letters do not paint a full picture, they do allow one to discern two solid features in the landscape of Treasury's thinking. First, the aim of a company in making an IPO is apparently a critical factor in Treasury's mind. If a company intends to use the proceeds of an IPO to any significant degree to benefit its work in Sudan, then the regulations would prohibit the IPO. Second, in Treasury's mind, another triggering factor besides the seller's plans for using the proceeds is the proportion between the size of the seller's business in Sudan and the size of its total business. If its business in Sudan predominates, then the regulations would prohibit the purchase of the shares in the IPO.<sup>27</sup>

Evidently, one of Treasury's general goals is to prevent the direct flow of substantial funds from a U.S. person into the Sudanese economy. But, as Treasury indicated, it has other goals, such as the maintenance of "open markets and the free flow of capital." The clash of those goals makes for some uncertainty. Thus, it is not at all clear from these letters what duties Treasury thinks a seller has to disclose its intentions and business statistics, or a prospective purchaser (or underwriter) has to inquire about those factors.

## **B. Investigations by Commission Staff Concerning PetroChina's IPO**

To improve its understanding of the applicability of the Sudan sanctions to the U.S. capital market, the Commission staff in March 2000 asked OFAC two specific questions about the plans of CNPC, along with its newly-formed subsidiary, PetroChina Company Limited (PetroChina), to make an initial public offering (IPO) of a large number of shares in PetroChina.<sup>28</sup>

PetroChina recently had filed with the SEC a registration statement for the IPO

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<sup>26</sup> Letter dated December 13, 1999, from Robertson to Wolf (citation omitted).

<sup>27</sup> Presumably, they would prohibit the underwriting of the IPO as well.

<sup>28</sup> Letter dated March 14, 2000, from Peter Wyckoff, Deputy Director/General Counsel, USCIRF, to R. Richard Newcomb, Director, OFAC.

(hereinafter, “Registration Statement”).<sup>29</sup> The Registration Statement stated that CNPC, as well as PetroChina, would be offering shares in PetroChina. It reported that CNPC owned equity interests in oil and gas projects in Sudan and other foreign countries, while PetroChina encompassed only oil and gas projects within China itself. It pointed out that some of the countries where CNPC and PetroChina were listing PetroChina’s shares for sale, such as the United States, impose economic sanctions on the countries where those oil and gas projects are located, such as Sudan. Further, it stated that those sanctions regimes “may apply to certain of purchasers or holders of” the PetroChina shares.<sup>30</sup>

The Registration Statement (under the heading “Use of Proceeds Verification”) then described the mechanism by which CNPC and PetroChina hoped to insulate prospective purchasers and holders from liability under U.S. sanctions. First, CNPC and PetroChina committed to establish separate accounts for receiving the proceeds of their respective sales of PetroChina shares. They further committed to refrain from paying down past borrowings of CNPC out of the CNPC account to the extent that such payments would result in a violation of any sanctions regime, including the Sudanese Sanctions Regulations, by the purchasers or holders of PetroChina shares. Specifically, CNPC and PetroChina stated:

In order to ensure that purchasers or holders of our H shares or ADSs

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<sup>29</sup> The Registration Statement bears Registration No. 333-11566. At the time of the staff’s inquiry, the most recent version of the Registration Statement available to it was Amendment No. 2. Since then, CNPC and PetroChina have submitted further iterations. However, this report, in recounting the staff’s inquiry and OFAC’s reply, refers only to Amendment No. 2. Nevertheless, it should be noted that the passages in the final Registration Statement, which took effect as of March 30, 2000, do not differ materially from the corresponding passages referenced or quoted here in this Report.

<sup>30</sup> Registration Statement, Amendment No. 2, 132. The relevant text of the Registration Statement, Amendment No. 2, is as follows:

CNPC owns equity interests in ten international projects relating to overseas exploration and production of crude oil and natural gas, refining operations and pipelines located in Canada, Kazakhstan, Peru, *Sudan*, Thailand and Venezuela. *Certain countries where our H shares or ADSs are listed impose sanctions regimes on certain of those countries, which may apply to certain of purchasers or holders of our H shares or ADSs.*

[Emphasis added.]



will not violate the relevant laws and regulations of the countries where our H shares or ADSs are listed, CNPC and we [PetroChina] have taken the following steps: . . . .

Funds in CNPC's separate account will only be disbursed in order to:

*reduce CNPC's borrowings, provided that such use will not result in any violation by the purchasers or holders of our H shares or ADSs of the laws of the countries where our H shares or ADSs are listed; and*

fund the employee retraining and severance plans established in connection with the restructuring of the CNPC group.<sup>31</sup>

CNPC and PetroChina further committed to create and follow a "procedure" for administering the CNPC account and to hire lawyers and accountants to advise them and monitor their handling of the account, as follows:

We and the underwriters have respectively retained independent legal counsel to review the procedures under which the separate accounts will be operated and funds will be disbursed. In addition, we intend to retain independent accountants to review the procedures under which the separate accounts will be operated and funds will be disbursed.

The independent legal counsel, together with the independent accountants, will assist us and CNPC in formulating relevant guidelines and procedures on funds tracing and accounting control, and will render legal opinions. The independent legal counsel will also answer questions that the independent accountants and the underwriters in this offering may raise in the course of implementing these guidelines and procedures . . . .<sup>32</sup>

On the surface, this language gives the impression that CNPC officials, together with legal and accounting watchdogs, will be engaging in intense and careful scrutiny of disbursements from the CNPC account with the aim, at least in part, of forestalling any disbursement that might trigger the Sudanese Sanctions Regulations against the purchasers or holders of shares. The Registration Statement, however, did not disclose

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<sup>31</sup> Registration Statement, Amendment 2, 132-33.

<sup>32</sup> Ibid., 133.

the content of the “procedure,” nor anything about the criteria that CNPC and PetroChina would use to decide whether payment of past borrowings would violate a sanctions regime.<sup>33</sup> Finally, CNPC and PetroChina claimed in the Registration Statement that those commitments would be sufficient to insulate purchasers or holders from liability, even if CNPC later failed to adhere to them.<sup>34</sup>

Against that background, the Commission staff posed two issues, as follows:

### **1. Purchaser Liability**

The first one was whether a U.S. person, by purchasing PetroChina shares from CNPC as part of the joint IPO, could violate the Sudanese Sanctions Regulations, assuming that the CNPC borrowings to which the Registration Statement referred included a significant portion of debt incurred in CNPC’s involvement with GNPOC. The Commission staff explained that its question had been triggered in large part by the possibility, acknowledged by CNPC explicitly in the Registration Statement, that it might fail to fulfill its commitments for managing the special account.

### **2. CNPC Liability**

The second issue was whether CNPC, upon offering and selling PetroChina shares, would be in violation of the Sudanese Sanctions Regulations if, at the same time, it continued to perform its obligations to GNPOC. The chain of logic behind this question, the Commission staff explained, was as follows:

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<sup>33</sup> Although CNPC and PetroChina commenced the sale in the United States of PetroChina shares pursuant to the Registration Statement during the first week of April 2000, they have not yet disclosed in SEC filings, to the best of the knowledge of the Commission staff, what criteria CNPC will use to release funds from its account for the purpose of retiring its borrowings. On March 27, 2000, they did file a “procedure” as an exhibit to Amendment No. 8 of the Registration Statement, but it was similarly unilluminating on this point.

<sup>34</sup>“Since the sanctions regimes relate to nationals and residents of the imposing country, which prohibit their nationals and residents from, among other things, indirectly participating in financings of projects in certain of those sanctioned countries, we do not believe that there would be any legal consequences to purchasers or holders of our H shares or ADSs as a result of any failure by CNPC, as our parent company, to operate its account in accordance with the guidelines and procedures.” Registration Statement, Amendment No. 2, 133.

- a. The regulations, as noted above, prohibit any “U.S. person” from dealing in any “property” of the government of Sudan, including any “property” of GNPOC inasmuch as GNPOC had become a SDN;
- b. The term “U.S. person” includes any corporation which is “in the United States.” Review of the underlying statute, 50 U.S.C. § 1702(a)(1)(B), suggests that a corporation is “in the United States” if it is “subject to the jurisdiction” of the United States. A corporation is commonly subject to the jurisdiction of the United States through various “long-arm” statutes if it does business, such as the selling of equity stock, in the United States;<sup>35</sup> and
- c. The term “property” includes “contracts of any nature whatsoever.”

The Commission staff further explained that, in light of the preceding chain of logic, it could well imagine that the President had intended to establish the rule that a company could not have access to the U.S. capital market so long as it were doing business with a sanctioned government, such as the government of Sudan.<sup>36</sup>

OFAC responded to both issues promptly, in effect answering them in the

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<sup>35</sup> See, e.g., *Credit Lyonnais Securities (USA), Inc. v. Alcantara*, 183 F.3d 151 (2d Cir., 1999). For discussion of the constitutional underpinnings for long-arm jurisdiction (i.e., fundamental fairness and substantial justice), see *Burger King Corporation v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174 (1985); *International Shoe Co. v. State of Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945).

<sup>36</sup> In a separate letter, the Commission staff asked the Securities and Exchange Commission (SEC) whether the Registration Statement provided sufficient disclosure with respect to (1) the potential applicability of the Sudanese Sanctions Regulations and (2) the rule of law in China. Letter dated March 14, 2000, from Peter Wyckoff, Deputy Director/General Counsel, USCIRF, to David Martin, Director, Division of Corporation Finance, SEC. The SEC promptly declined to comment on the adequacy of the Registration Statement, saying that “as a matter of policy, we do not discuss specific disclosure or enforcement views with respect to any specific registrant unless such views otherwise become a matter of public record.” Letter dated March 27, 2000, Martin to Wyckoff.

negative.<sup>37</sup> With respect to the liability of purchasers of PetroChina shares from CNPC, OFAC first acknowledged that, under 31 CFR § 538.207, “U.S. persons are prohibited from performing any contract, including a financing contract, in support of an industrial, commercial, public utility, or government project in Sudan.” It then stated:

Given the broad scope of the global activities of CNPC, *a clear statement that CNPC would use the proceeds of its sale of PetroChina shares for activities in Sudan would be required* to find any nexus between a U.S. person’s purchase of those shares and the prohibitions of section 538.207.<sup>38</sup>

In other words, according to OFAC, a purchaser of PetroChina shares from CNPC would be in trouble only if CNPC had indicated clearly that it planned to use the proceeds for its activities in Sudan.<sup>39</sup> The purchaser would be safe so long as CNPC kept its plans obscure or lied unsuspectingly about them. Moreover, by the above statement, OFAC suggested that it regards the Registration Statement, and in particular the section headed “Use of Proceeds Verification”, as not being sufficiently “clear” to trigger liability.

OFAC elaborated on this reading, in language echoing Treasury’s December 13, 1999 letter to Congressman Wolf, as follows:

The Regulations do not prohibit U.S. persons from making investments in non-Sudanese, third-country companies doing business in Sudan (or with the Government of Sudan, including specially designated nationals of Sudan), provided that (1) the investment *is not earmarked for Sudanese activities*, and (2) such companies are not owned or controlled by the Government of Sudan or predominantly dedicated to or derive the predominant portion of their revenues from investments, projects, or

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<sup>37</sup> Letter dated March 27, 2000, from R. Richard Newcomb, Director, OFAC, to Peter Wyckoff, Deputy Director/General Counsel, USCIRF (FAC No. SU-180427).

<sup>38</sup> *Ibid.*, 1.

<sup>39</sup> From the context, it would be fair to suppose that OFAC was thinking that retirement of Sudan-related debt constituted an “activity” in Sudan, but it must be acknowledged that OFAC did not make that idea explicit.

other economic activities in Sudan.<sup>40</sup>

In other words, in OFAC's view, a U.S. person, such as a U.S.-based pension plan or an individual, can purchase shares in a company that does large amounts of business with an arm of the government of Sudan (e.g., GNPOC) without fear of violating the Sudan sanctions so long as the company obscures its intentions or lies convincingly about them. Apparently, a company's intentions are presumptively manifest when the Sudan-related business happens to be the predominant portion of the company's overall business. In the context of the Registration Statement, OFAC seems to be saying that it is the very obscurity of CNPC's plans for administering its special account that insulate purchasers and holders from liability.

In thus elaborating on its views, OFAC is notably silent on whether the purchaser, or indeed the underwriter, has any duty of inquiry when the seller has been obscure about its intentions.<sup>41</sup>

In the same letter, OFAC also responded to the issue of whether CNPC would be a "U.S. person" by virtue of its offer of PetroChina shares or other business activities in the United States, such that CNPC might be violating the Sudanese Sanctions Regulations by continuing to perform its obligations to GNPOC. OFAC stated:

An entity is a "U.S. person" for purposes of section 538.315 of the Regulations if it is organized under the laws of the United States or any jurisdiction within the United States, or is located in the United States. *For a foreign-organized corporation with a U.S. office, this means that the U.S. office's activities – but not those of offices outside the United States – become subject to the Sudan sanctions relating to the U.S. person.*<sup>42</sup>

In effect, according to OFAC, it is only the individuals who are staffing a CNPC office

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<sup>40</sup> Ibid. (emphasis added; citation omitted).

<sup>41</sup> Commonly, even when liability turns on willfulness, a person cannot shield himself from that liability merely by remaining ignorant of the truth when the person has good reason to suspect the truth or strong opportunity to discover it.

<sup>42</sup> Letter dated March 27, 2000, from Newcomb to Wyckoff, 2 (emphasis added).

here in the United States who run a risk of violating the Regulations.<sup>43</sup>

A recent letter from the President gives some insight into the thinking behind OFAC's March 27 response. In responding to a December 1999 joint letter from human rights activists about Sudan, the President said:

I share your concerns about the implications of Khartoum's new oil revenues. You specifically raised the issue of China National Petroleum Company (CNPC) and its access to U.S. capital markets. Our sanctions regime applies to "U.S. persons" and generally prohibits direct financial dealings with Sudan, but does not cover foreign companies' activities in Sudan. *We have not pursued new "extraterritorial" or third country sanctions because I believe that doing so would ultimately prove counterproductive and hurt our ability to use diplomatic and other means to maintain economic pressure on the regime.*<sup>44</sup>

Subsequent to its inquiry to OFAC, the Commission staff, in examining later filings to the SEC by CNPC and PetroChina, found a "procedure" for CNPC's administration of its special account as an exhibit to Amendment No. 8 of the Registration Statement (Exhibit 10.18). It is entitled "Procedure for Internal Management of Proceeds Accounts (together with English translation)" (hereinafter, the "Procedure"). The Procedure, however, does not contain any guidance for the account custodians on how, in order to avoid sanctions, they may or may not use the funds for the purpose of retiring CNPC's debt.

Further examination of PetroChina's filings with the SEC brought to light the commitment of PetroChina and CNPC to the underwriters and certain others that two U.S. law firms would provide, *effective as of the date of the sale*, their legal opinion that "the participation by United States persons in the Global Offering as underwriters and/or purchasers of the ADSs or Shares would not violate the Sudanese sanctions

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<sup>43</sup> Apparently, the only way the staff of a U.S. office of CNPC could violate the Regulations would be to work on performance of CNPC's obligations to GNPOC, regardless of whether they were working on the IPO or not. Working on the IPO would not augment liability if they were involved with GNPOC; it would not trigger liability if they were not.

<sup>44</sup> Letter dated February 18, 2000, from President Bill Clinton to Diane Knippers, President, The Institute on Religion & Democracy (emphasis added).

regulations (31 C.F.R. Part 538(OFAC 1998))”.<sup>45</sup> Apparently, CNPC and PetroChina thought that these law firms would have a basis for such an opinion even though the account custodians, along with the lawyers and accountants, had yet to begin the intense collaboration depicted by the Registration Statement. The whole arrangement is odd, not only because of the timing of the legal opinions, but also the non-disclosure of the substantive criteria for administering CNPC’s account.<sup>46</sup>

### C. Summary of Analysis

It appears that in effect the President has established a “Don’t Ask, Don’t Tell” policy with respect to IPOs by companies, like CNPC, who are doing some but not most of their business with the government of Sudan or GNPOC. The Sudanese Sanction Regulations present no significant impediment to an IPO by such a company, so long as the company withholds disclosure of any plans it may have to channel the proceeds to its activities with the government or GNPOC. In OFAC’s view, the company has no duty to tell, and the purchaser no duty to ask, about such plans. Even an underwriter, apparently, may hide behind the obfuscation of its client. OFAC likewise apparently has no intention to investigate, except perhaps where there are strong structural indications that the proceeds will flow to the company’s business in Sudan.

OFAC has clarified also that the Regulations generally do not prevent a foreign company doing business with the government of Sudan or GNPOC from also doing business in the United States, including offering securities. The only restriction is that the U.S. office of such a company cannot do business with the government of Sudan or GNPOC.

Furthermore, the Regulations do not call for any recordkeeping and reporting for a company that is doing business with the government of Sudan or GNPOC and also doing business in the United States.

The practical effect of these policies is that it is possible for any one of the partners in GNPOC to obtain capital on the U.S. market and channel some of it into development of the oil fields in Sudan. It is also possible for any of them to generate

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<sup>45</sup> Exhibit 1.1 to Amendment No. 8 of the Registration Statement (filed March 27, 2000), entitled “Underwriting Agreement (U.S. Version),” 46 (emphasis added).

<sup>46</sup> Even more curious is CNPC’s promise in the Underwriting Agreement (p. 25) not to purchase any asset in Sudan nor in any other sanctioned country for the duration of the relevant sanctions.

revenue through other forms of business activities in the United States and channel that revenue into development of those oil fields.

On the other hand, the field of economic sanctions presents a rich history of prior successes and failures and complex questions of foreign and economic policy. Past experience with the extraterritorial application of sanctions and secondary boycotts, together with a substantial literature on economic sanctions and free market considerations, calls for careful deliberation over any changes in the current system of sanctions for Sudan.



## CHAPTER THREE: THE PEOPLE'S REPUBLIC OF CHINA

### A. Introduction

On April 25, 1999, more than 10,000 practitioners of the Falun Gong spiritual movement congregated at the gates of *Zhongnanhai*, the compound in Beijing where senior officials of China live and work.<sup>1</sup> They gathered to protest quietly the arrest of some of their members and to urge that their movement be recognized. Three months later, the government of China began a brutal crackdown of Falun Gong by arresting tens of thousands of its adherents, including some members of the Chinese Communist Party, military officers, and government officials. According to Falun Gong members, and independent sources, thousands remain in detention, hundreds have been sentenced to long prison terms, hundreds have been tortured, and several have died while in prison.<sup>2</sup>

The outside world watched in astonishment as the powerful Chinese government responded to Falun Gong in a way that appears to be frightened and repressive. How could a government that rules more than 1.28 billion people have such a dreadful fear of a movement that had produced no political tracts, had no identifiable political agenda, had no weapons, and appeared to be no more threatening than a group of people practicing Tai Chi?

Seemingly obsessed with the possibility of instability, authorities have sought to silence not just political dissent, but other organizations not specifically controlled by the bureaucracy. Even politically benign religious and belief groups are targeted, with the consequence that the already limited scope of religious freedom in China is diminished.<sup>3</sup>

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<sup>1</sup> Falun Gong (or *Falun Dafa*) is a blend of traditional Chinese *qigong* practices that combines meditation, exercise, and spiritual thought. Estimates of the number of practitioners range from several million to seventy million.

<sup>2</sup> Lu Siqing, Director, Information Center for Human Rights and Democratic Movements, Hong Kong, U.S. Commission on International Religious Freedom, *Hearings on Religious Freedom in China*, March 16, 2000, 18. See also Falun Gong Practitioners, ed., *A Report on Extensive and Severe Human Rights Violations in the Crackdown on Falun Gong in the People's Republic of China 1999-2000* (2000), 5.

<sup>3</sup> Under international human rights instruments, the right to freedom of religion includes the freedom to have or to adopt the religion or belief of one's choice and the freedom, in community with others, to manifest one's religion or belief. See Universal

## 1. General Assessment of the Status of Religious Freedom in China

State control of religious activity has been the clear and consistent policy in China from 1978 to the present.<sup>4</sup> In public statements and internal communications, Chinese authorities cite Marxist orthodoxy: religion is antithetical to communism and limited religious activity, under the control of the state, is tolerated only as a matter of expediency.<sup>5</sup> In recent years, authorities have begun to shift the means of control of religious activity from bureaucratic influence toward more regularized legal mechanisms and away from local authority to central authority. While these changes can be said to make regulation of religious activity somewhat more consistent, transparent, and less arbitrary, and while new laws define a limited sphere of protected religious activity, they essentially codify rigid, repressive, and ideological strictures.<sup>6</sup>

The government of China controls and manipulates religious activity for its own ends and uses discrimination, harassment, or violence to effectuate that control. It criminalizes collective religious activity by members of religious groups that are not registered with the state, and it restricts registration to those groups that submit to membership in one of the government-controlled associations affiliated with the five officially recognized religions. Members of registered religious groups can only engage in a limited range of “normal” – as determined by the state – religious activities. Religious groups that the authorities fear undermine their control over China – such as Buddhists in Tibet and Muslims in Xinjiang – are singled out for even more thorough repression and control.<sup>7</sup>

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Declaration of Human Rights (1948), art. 18; International Covenant on Civil and Political Rights (1966), art. 18; and United National Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981), art. 1.

<sup>4</sup> See Nina Shea, Commissioner, U.S. Commission on International Religious Freedom, U.S. House of Representatives, Committee on International Relations International Operations and Human Rights Subcommittee, *Hearings on the U.S. State Department Country Reports on Human Rights Practices for 1999*, March 8, 2000 (written testimony) 1.

<sup>5</sup> See Human Rights Watch/Asia, *China: State Control of Religion* (1997), 7-8.

<sup>6</sup> For a discussion of laws and regulations that limit religious activity in China see text at notes 75-85 below.

<sup>7</sup> See section B.3 and B.4 below.

The practices of the Chinese government with respect to freedom of religion and belief violate the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights. Each of these international instruments prohibits discrimination on the basis of religion or belief, and the Universal Declaration and the ICCPR protect the right to hold beliefs and to manifest beliefs. The government of China, however, prohibits several beliefs and imposes undue restrictions on the manifestation of beliefs. UN High Commissioner of Human Rights, Mary Robinson, on a recent trip to the PRC called deplorable China's deteriorating record of human rights abuses and cited denial of freedom of religion as a major indicator of the worsening situation.<sup>8</sup>

The religious and belief communities that resist registration or that have been denied permission to register, including Catholics loyal to the Pope and to Protestants who worship in “house churches,” have no legal standing in China. Adherents are often harassed, detained, and fined. Meetings are broken up and unauthorized buildings are destroyed. Authorities are empowered to declare an offending group an “evil cult” and ban even activities that, in another group, would be allowable “normal religious activity.”<sup>9</sup> In the past year, several Protestant groups and syncretic spiritual movements such as Falun Gong have been thus labeled and banned. Leaders of these groups have been arrested and given long sentences under restrictive provisions of China’s Criminal Code.<sup>10</sup>

Despite official efforts to bridle religious activity, the number of Chinese participating in religious activities has increased dramatically. While there are no exact figures, it is clear from statements of political and religious leaders that China is experiencing an unprecedented revival of religious belief and activity. Growing numbers of worshipers, religious publications, and places of worship, together with

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<sup>8</sup> Associated Press, “U.N. China Rights Worsening,” March 2, 2000.

<sup>9</sup> Official understanding of what constitutes “normal religious activity” is discussed in Secretariat of the Central Committee of the CPC, Document 19 (1982), “The Basic Viewpoint and Policy on the Religious Question During Our Country’s Socialist Period,” reprinted in Asia Watch, *Freedom of Religion in China* (1992), appendix 2, 36-48. See also note 83 below.

<sup>10</sup> The relevant provisions are discussed in text at note 69 below.

deepening official concern, are all evidence of this growth.<sup>11</sup> For decades the official count was “100 million believers.” After conducting an extensive survey of registered churches and investigating unofficial religious groups in 1996, the Chinese government estimated a total of 180 million believers. At a national meeting of religious affairs bureau directors held in Beijing on January 10, 2000, it was reported that there are now an estimated 220 million religious believers in the PRC, including 150 million Buddhists, 25 million Protestants, 3.2 million Catholics, 11 million Muslims and 5.5 million Taoists.<sup>12</sup>

## 2. The Communist Party and the State

In China, policy toward religion is established by both the Communist Party of

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<sup>11</sup> Brent Fulton, “Freedom of Religion in China: the Emerging Civil Discourse,” in *Civil Society, and Chinese Communities*, eds., Randy Kluver and John H. Power (1999), 53-66, discusses specifically increases in the number of books published in China dealing with religion. Dr. Kim-Kwong Chan, Executive Secretary of the Hong Kong Christian Council, notes that the Bible is “quite readily available, and there is more Christian literature published than ever before, and published by the local and also central councils. And the community churches are being dedicated almost on a daily basis. For the past four years, the Christian Council has helped build more than 100 churches in China, and another 20 centers too.” Kim-Kwong Chan, Executive Secretary, Hong Kong Christian Council, USCIRF, *Hearings on China*, 77. The Center for Religious Freedom at Freedom House reports increases in some house church congregations of from 300 to 400 percent between 1980 and 1996. Puebla Program on Religious Freedom, “Persecution of the Christian Underground in China: Conclusions of the Puebla Program on Religious Freedom, June 6, 1997,” *Country Reports, China*, Freedom House (<http://www.freedomhouse.org/religion/china.htm> accessed April 29, 2000).

<sup>12</sup> Estimates on the number of religious adherents vary widely. These most recent official estimates can be taken only as approximations. They are found in Li Zijing, “Several Policy Issues Concerning Current Religious Work,” *Hong Kong Cheng Ming*, February 1, 2000, (in FBIS February 5, 2000). This article reports that Chinese Ministry of Public Security’s internal statistics estimate 35 million Christians and 8.5 million Catholics. China Source, estimates as many as 80 million Protestants. See China Source, “House Church Leaders Appeal to Chinese Communist Party,” *China Watch* No. 18, August 1998. Similarly, some estimates as to the number of Catholics in China exceed 12 million. For readings on the history of Christianity in China see Daniel H. Bays, ed., *Christianity in China* (1996). For information about indigenous Chinese religions, see Donald S. Lopez, Jr., ed., *Religions of China in Practice* (1996).

China (CPC) and the State.<sup>13</sup> The CPC and the State operate parallel centralized organizations. Provinces themselves have a rank within the national administrative framework equal to that of the central ministries. All provinces (and municipalities with the rank of province) “are equal to each other and to the central government ministries and none of these units can issue binding orders to any others.”<sup>14</sup> Within the

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<sup>13</sup> The CPC plays a role in government that far exceeds that of political parties in western democracies. Although the particular institutions and procedures of the CPC continue to evolve, the basic structure is relatively straightforward. The CPC claims over 60 million members. The National Party Congress of the Communist Party of China (Party Congress) meets once every five years to elect party officials and to approve the direction party leaders set forward. It last met in 1997 and will meet again in 2002. When the Party Congress meets, it elects the approximately 190-member Central Committee of the Party Congress who in turn select the twenty-two member Politburo, the seven-member Standing Committee of the Politburo and members of the Central Military Commission. While the Central Committee has authority to manage the affairs of the CPC between sessions of the Party Congress, the real power resides in the Standing Committee of the Politburo. Jiang Zemin is the Chairman of the Politburo Standing Committee.

The ultimate tie between the CPC and the State is embodied in the Chairman of the CPC's Standing Committee, Jiang Zemin, who also serves as the President of the People's Republic of China. The President, who is the Chief of State, is elected formally by the supreme legislative body, the National People's Congress (NPC). Li Peng is the Chairman of the NPC. The Constitution provides that the NPC is the highest organ of state power. It is the principal legislative body in China and is composed of deputies selected from the provinces, autonomous regions, municipalities, and armed forces. In practice, however, its role is overshadowed both by the CPC and the State Council. China's chief executive organ, the State Council, is headed by the Premier, currently Zhu Rongji, the Vice Premiers (currently four), and the State Councilors (currently five). The State Council serves a role roughly equivalent to that of a cabinet in a parliamentary system, although it is empowered to issue circulars and orders that have the effect of law. Officials within the ministries are, in the vast majority of cases, members of the CPC. In each ministry, senior members of the party organize themselves into “core groups” that determine the policy agenda for their ministry. Party committees operate within all levels of the bureaucracy.

<sup>14</sup> Kenneth Lieberthal, *Governing China: From Revolution Through Reform* (1995), 164. Administrative reforms of the 1980s, broadly speaking, shifted fiscal and administrative responsibility away from ministerial authority toward provinces. In this light it is particularly significant that central authorities are increasingly providing regulation and direction on religious affairs.

CPC, the United Front Works Department (UFWD), now headed by Wang Zhaoguo, has the primary responsibility for formulating policy on religious issues and working with minority and other non-party organizations and groups. State policy toward religion is formulated by the Religious Affairs Bureau (RAB), which is located within the Ministry of Civil Affairs.<sup>15</sup> The RAB is directed by Mr. Ye Xiaowen who acts as the principal interlocutor between China and foreign governments on issues related to religion. The recent major pronouncements on religion, however, have been issued jointly by the Standing Committee and the State Council – the highest bodies of the CPC and the State respectively.

## **B. Principal Violations of Religious Freedom**

There are a number of problems pertaining to freedom of religion and belief in China that stem from state manipulation and control of religion. The Commission finds that the seven principal problems are:

1. Denial of religious belief to large sectors of the population;
2. Outlawing of numerous religious and belief groups branded “cults”;
3. Egregious impingements on freedom of religion in Tibet;
4. Severe encroachments on religious practice in the Xinjiang Uighur Autonomous Region;
5. Persecution of non-registered groups;
6. Restriction of religious activity for registered churches; and

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<sup>15</sup> The RAB supervises the five official “patriotic associations” that in turn supervise the activities of the five official religions. The five religions, and their associations are: Buddhism (Buddhist Association of China); Catholicism (Chinese Catholic Patriotic Association (CCPA), a “mass organization of laity and clergy” and the Chinese Catholic Bishops Conference (CCBC), responsible for implementing the party policy and managing church affairs); Daoism (Daoist Association of China); Islam (Islamic Association of China); and Protestantism (“Three-Self Patriotic Movement”/ Chinese Christian Council). Some religious leaders view these organizations primarily as instruments of repression. The Ajia Rinpoche, the former Vice President of the Buddhist Association of China, who is now in exile in the United States, calls the Buddhist Association of China one of the tools by which the government exerts political dominance over all of Tibetan Buddhism, effectively “foxes guarding the hen house.” See Ajia Rinpoche, USCIRF, *Hearings on China*, (written testimony), 2.

## 7. Ongoing campaigns to promote atheism.

Over the past several years, the Chinese authorities have increasingly used laws and regulations as an instrument for harassing religious groups and manipulating and maintaining control over their activities. However, officials regulating religious activity continue to be guided by CPC policy directives on religion. Furthermore, the Chinese legal system does not protect human rights from state interference, nor does it provide effective remedies for those who claim that their rights have been violated. Thus, moving to a system of regulation of religion according to law has modified the means of state control, but has not appreciably improved the conditions of religious freedom in China. The modest improvements in transparency and regularity are superseded by the increasing repression of religious groups.

### 1. Denial of Religious Belief

The right to freedom of belief is explicitly denied to the 60 million members of the CPC, the three million members of the Chinese military, and hundreds of millions of minors under the age of 18.<sup>16</sup> The state aggressively asserts its monopoly over the spiritual education of those under 18, thus making participation by minors in any religious activity subject to discipline. Repeated campaigns to purge the party and the army of believers have been waged over the last five years. A 1995 document circulated to party organizations at the provincial level ordered the expulsion of party members who belong to religious organizations, whether open or clandestine. Then, in 1997, a CPC-issued circular ordered party members not to adhere to religious beliefs. Again, in 1999, a circular reminded party cadres that religion was incompatible with party membership.<sup>17</sup> Jiang Zemin himself emphasized in a recent speech, “Once we have verified that a party cadre joined in religious activities, we should instruct him to withdraw from the party or revoke his party membership . . . . This is a principle of our organization and the spirit of our party Constitution.”<sup>18</sup>

### 2. Banning “Cults”

The anti-cult provision of the Criminal Code has been used against many

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<sup>16</sup> See Secretariat of the Central Committee, Document No. 19 (1982), “The Basic Viewpoint and Policy on the Religious Question During Our Country’s Socialist Period,” in Human Rights Watch/Asia, *Freedom of Religion in China*, 40.

<sup>17</sup> See Human Rights Watch, *World Report 2000* (2000), 181.

<sup>18</sup> Cited in Li, “Several Policy Issues Concerning Current Religious Work,” 3.

groups.<sup>19</sup> Action is largely directed at organizations with national networks who have raised what authorities perceive to be political challenges. Following a peaceful demonstration in Beijing by Falun Gong practitioners, the Civil Ministry declared Falun Gong an illegal organization and charged it with endangering social stability and propagating “superstition.” Security forces have detained thousands of prisoners and continue to do so. Leaders were arrested, tried, and sentenced to between six and eighteen years. Authorities wage a virulent anti-Falun Gong media campaign vilifying the group’s leader, Li Hongzhi, and condemned the practices of the group. Hundreds of thousands of copies of Falun Gong books were destroyed.<sup>20</sup> In some instances, even private practice of Falun Gong has resulted in arrest.<sup>21</sup> On July 22, 1999, the Department of Public Security prohibited all Falun Gong activities.

The anti-cult provision of the Criminal Code also has been used against Christian groups apparently in a response to a bold move in the summer of 1998 by leaders of 12 house church networks. Frustrated by policies that render their evangelical and charismatic practices illegal, these leaders issued a communiqué calling on the leadership of the CPC to open dialogue with the “Chinese House Church.”<sup>22</sup> The communiqué demands the unconditional release of Christians imprisoned for practicing their religion, the modification of regulations that limit the activities of house churches, the end of government harassment of house churches and the clarification of the definition of the term “cult.” Religious leaders associated with the document have been

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<sup>19</sup> In addition, the relevant provision of the Criminal Code was used against Liu Jiaquo and Zhu Aiqing, leaders of the Zhushen sect in Hunan. Charged with the crimes of rape, organizing and using an evil religious organization to undermine the enforcement of state laws, Liu Jiaguo was sentenced to death. See “Head of Religious Cult Executed,” *Beijing Fazhi Ribao*, October 13, 1999 (in FBIS October 19, 1999).

<sup>20</sup> Mike Jendrzeczyk, Human Rights Watch, “China’s Accession to the WTO and Human Rights,” U.S. House of Representatives Congressional Human Rights Caucus, *Hearings on China’s Pending Accession to the World Trade Organization*, April 6, 2000 (written testimony).

<sup>21</sup> See Falun Gong, *A Report on Extensive and Severe Human Rights Violations*, 17.

<sup>22</sup> An English translation of the communiqué is published in China Source, “House Church Leaders Appeal to Chinese Communist Party,” *China Watch* 18, August 1998.



arrested. There is some evidence that the crackdown on Falun Gong and Christian Fellowship involved not just local RAB and Public Security Bureau (PSB) personnel, but national security forces as well, indicating a determination by central authorities to deal forcefully with this broad network of churches.<sup>23</sup>

Several other *qigong* groups have been banned including Guo Gong, Chi Bei Gong and Benevolence Practice. In January of 2000, Zhong Gong, a meditation and exercise group claiming 20 million practitioners, was added to the list of banned organizations.<sup>24</sup> Also outlawed under anti-cult provisions of the law is a Buddhist group called Guan Ying School.<sup>25</sup>

### 3. Tibet

Fearing that growing nationalism in Tibet will fuel a movement toward independence, Chinese authorities exercise tight control of Tibetan monasteries, assume authority to select and train important religious figures, and wage an invasive ideological campaign both in religious institutions and now among the people. Authorities continue to exercise strict control over monasteries. Only those deemed “politically reliable” are allowed to be part of the Democratic Management Teams that oversee the affairs of the monasteries.<sup>26</sup> These groups limit the number of monks and nuns in a monastery, delay the official training of monks and nuns until the age of eighteen, severely restrict religious scholarship in the monastic tradition, and conduct patriotic education campaigns.<sup>27</sup> Since 1997 government officials have actually become resident in Tibetan monasteries in order to impose socialist education on Tibetan monks.<sup>28</sup>

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<sup>23</sup> Memorandum from Christian Solidarity Worldwide, “Repression of Christians in China,” February 2000, 3.

<sup>24</sup> USCIRF, *Hearings on China* (Lu written testimony), 5.

<sup>25</sup> *Ibid.*, 2.

<sup>26</sup> Mickey Spiegel, Consultant, Human Rights Watch, USCIRF, *Hearings on China* (written testimony), 4.

<sup>27</sup> Tibet Information Network and Human Rights Watch/Asia, *Cutting Off the Serpent’s Head; Tightening Control in Tibet, 1994-1995* (1996), 115.

<sup>28</sup> USCIRF, *Hearings on China* (Ajia Rinpoche testimony), 92.

In an action denounced by the Dalai Lama, authorities of the Tibet Autonomous Region and the Religious Affairs Bureau in Beijing approved the selection of a boy as the reincarnation of the sixth Reting Lama. This is the latest in a campaign to control the future leadership of Tibetan Buddhism. In 1995 the Dalai Lama identified the young boy Gendun Choekyi Nyima as the reincarnate Panchen Lama. The Chinese government immediately denounced the Dalai Lama's choice, detained the boy and his family, and pushed the acceptance of their choice, Gyaltzen Norbu. Chinese authorities continue to hold the Panchen Lama at an undisclosed location and have refused all requests to visit him put forward by official and unofficial foreign delegations. Chinese officials have no more authority under Tibetan Buddhism to select reincarnated lamas than they do to select bishops under Roman Catholicism.<sup>29</sup>

Besides the assumption of authority to select key religious leaders, Chinese authorities have groomed key reincarnates already named to use for their own political purposes—among them, the young Karmapa Lama who recently fled his monastery for a life in exile. He had been used by Chinese authorities as a symbol of religious freedom, yet he was not allowed to receive religious instruction from traditional tutors. In a statement made at Dharamsala, India on February 19, 2000, the young leader claimed that “Tibet has suffered great losses. Tibetan religion and culture have reached the point of complete destruction.”<sup>30</sup> Since 1996, authorities in Tibet have conducted three campaigns to “eradicate ‘splittism’ and the influence of the Dalai Lama.”<sup>31</sup> This invasive political education strategy requires the renunciation of support for the Dalai Lama and the recognition of the Chinese-designated Panchen Lama. Expressions of loyalty to the Dalai Lama as a spiritual leader, failure to renounce him, or even the display of his photograph may lead to a charge of endangering national security.<sup>32</sup>

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<sup>29</sup> It was because of pressure to promote the Communist authorities' choice of Panchen Lama to the Tibetan people as the true Panchen Lama that Ajia Rinpoche defected to the West. Ibid.

<sup>30</sup> Bhuchung K. Tsering, Director, International Campaign for Tibet, U.S. House of Representatives, Committee on International Relations, Subcommittee on International Operations and Human Rights, *Hearings on Human Rights in China and Tibet*, March 2, 2000, (written testimony), 3.

<sup>31</sup> Steven D. Marshall, *Hostile Elements: A Study of Political Imprisonment in Tibet: 1987-1998* (1999), 5.

<sup>32</sup> Matthew T. Kapstein notes that “whereas it was once possible to separate [the Dalai Lama's] political and religious roles, and in this way to justify the public display of his likeness, the developing tendency has been to regard the show of allegiance to

Individuals who resist the re-education are punished.<sup>33</sup> The International Campaign for Tibet reports that over 1,000 monks and nuns were expelled from their monasteries and nunneries in 1999, bringing to more than 11,000 the number of monks and nuns turned out of their monasteries since the beginning of the “Strike Hard” campaign in 1996.<sup>34</sup> Forty-nine were arrested for resisting “patriotic re-education.”<sup>35</sup> Police arrested more than 100 Tibetans for expressing their beliefs.<sup>36</sup> Reeducation campaigns continue in prisons. Monks and nuns who resist reeducation are often tortured. Three monks in their twenties died from injuries suffered in Chinese-run prisons.<sup>37</sup> In the last year, the harsh ideological campaign that officials have aggressively pursued in Tibetan monasteries has been extended to the general population.

China continues to restrict access to Tibet and strictly controls news of the current situation.

#### 4. Uighur Muslims in Xinjiang

Uighurs are a recognized minority nationality in China. They are a Turkic-speaking people living in northwestern PRC. More than 99 percent of China’s 8 million Uighurs inhabit the oases and cities of Xinjiang. Over 400,000 Uighurs live in neighboring Central Asian countries. The vast majority of Uighurs are Sunni Muslims.

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him as fundamentally political in nature.” Melvyn C. Goldstein and Matthew Kapstein, *Buddhism in Contemporary Tibet: Religious Revival and Cultural Identity* (1998), 148.

<sup>33</sup> See, for example, Tibet Information Network, “Closure of Religious Sites Following ‘Patriotic Education,’” January 27, 1999 (<http://www.tibetinfo.net/news-updates/nu270199.htm> accessed April 29, 2000).

<sup>34</sup> Bhuchung K. Tsering, U.S. House of Representatives, *Hearings on Human Rights in China and Tibet* (written testimony), 2.

<sup>35</sup> Tsering, U.S. House of Representatives, *Hearings on Human Rights in China and Tibet* (written testimony), 2.

<sup>36</sup> *Ibid.*, 1.

<sup>37</sup> Human Rights Watch, *World Report 2000*, 182.

Following the Cultural Revolution, authorities allowed mosques and Quranic schools to open in Xinjiang, resulting in a flourishing of religious activity in the 1980s. At the end of the decade, however, several events caused officials to retract this relatively liberal policy. Authorities began to fear “Muslim extremists” would take advantage of changing domestic and international conditions. (Jiang Zemin has called Xinjiang the biggest threat to his administration.)<sup>38</sup> Fearing the influence of newly independent central Asian states and the growing boldness of disaffected Uighurs (as evidenced in local demonstrations and riots and a handful of violent incidents) central authorities are implementing a comprehensive strategy of tight control of the region.<sup>39</sup> A centerpiece of that strategy is the elimination of unauthorized religious activity and the “tight control” of authorized religious practice.

This repressive policy is set out in CPC Central Committee Document No. 7, “Record of the Meeting of the Standing Committee of the Politburo of the Chinese Communist Party Concerning the Maintenance of Stability in Xinjiang,” (1996). Amnesty International reports thousands of arbitrary arrests, widespread use of torture, and instances of extra-judicial executions.<sup>40</sup> Consequences of this tighter policy are documented in a recent Amnesty International report. Many mosques and Quranic schools have been closed. Unauthorized construction of mosques has been halted. Religious leaders thought to be unreliable have been dismissed or arrested.<sup>41</sup> Muslims holding positions in the government who continue to practice Islam have lost their jobs.<sup>42</sup> A Xinjiang newspaper reports that authorities in Ili were moving “village by

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<sup>38</sup> Willy Wo-Lap Lam, “Separatists Face Fight Against Top Cadres,” *South China Morning Post*, July 30, 1997 (in FBIS July 30, 1997).

<sup>39</sup> China has acted quickly to secure accords with central Asian states to combat the potential of terrorist activities. See for example, “Uzbekistan to Coordinate Anti Islamic Efforts with PRC,” *Mashhad Voice of the Islamic Republic of Iran in Uzbek* November 11, 1999 (in FBIS November 13, 1999).

<sup>40</sup> Amnesty International, *People’s Republic of China: Gross Violations of Human Rights in Xinjiang Uighur Autonomous Region* (1999), 2.

<sup>41</sup> USCIRF, *Hearings on China* (Spiegel written testimony), 5.

<sup>42</sup> Amnesty International, *People’s Republic of China: Gross Violations of Human Rights in Xinjiang Uighur Autonomous Region*, 9.

village, hamlet by hamlet” to clean up illegal religious activity.<sup>43</sup> The publication and sale of religious materials has been largely curtailed and religious materials have been confiscated. The *Urumqi Evening News* reported that police had searched the 56 mosques of Egarqi and in Aksu district the police are “tightly control[ing] their activities, their Imams and Muezzins.”<sup>44</sup> Unauthorized religious activity has been curtailed.<sup>45</sup> Religious teachers and students from unregistered schools have been detained. Many have been sent to re-education through labor camps.<sup>46</sup> Conditions in Xinjiang labor camps and prisons are thought to be some of the worst in China. Brutality and hunger are common.<sup>47</sup> Some inmates simply disappear.<sup>48</sup> Authorities executed at least one religious scholar who held private classes for young Muslims.<sup>49</sup>

Association with foreign religious groups is limited. Though they take credit for allowing nearly 4,000 Muslims a year (some of whom are subsidized) to make the pilgrimage to Mecca, authorities prohibit many Uighurs from making the religiously mandated journey. A witness reports that authorities refused to allow hundreds of

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<sup>43</sup> Ibid., 9.

<sup>44</sup> Ibid., 10.

<sup>45</sup> Ibid., 9-10.

<sup>46</sup> Uighur Witness, USCIRF, *Hearings on China*, March 16, 2000 (written testimony), 3.

<sup>47</sup> James Seymour and Richard Anderson report that Xinjiang police “have no concept of human rights. They treat all the prisoners like slaves. [W]hen they were growing up they learned that all prisoners were enemies of the people and should be treated accordingly. So it was seen as perfectly appropriate to treat prisoners as sub-humans.” They further report, in their extensive comparative study of China’s *laogai* system, that prison conditions in Xinjiang are “among the most inhumane in the PRC, with perhaps only Tibet’s being worse. Conditions in the bingtuan are particularly harsh, official claims to the contrary notwithstanding. [P]risoners rarely enjoy sufficient food.” James D. Seymour, and Richard Anderson, “Xinjiang: One Region, Two Systems,” *New Ghosts Old Ghosts: Prisons and Labor Reform Camps in China* (1998), 44-127, 126-127.

<sup>48</sup> USCIRF, *Hearings on China* (Uighur written testimony), 3.

<sup>49</sup> USCIRF, *Hearings on China* (Spiegel written testimony), 5.

Uighur pilgrims with passports and tickets to board a flight for Saudi Arabia saying there were not part of the state quota.<sup>50</sup>

As in other areas of China, authorities in Xinjiang have launched an “in-depth atheist education” campaign.<sup>51</sup> And, as in Tibet, access to information in the region is highly restricted.

## 5. Persecution of Unregistered Groups

The Protestant house-church movement and Catholics loyal to the Vatican are among those groups that have resisted registration on principle or been denied permission to register.<sup>52</sup> While officials in many regions formerly allowed the

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<sup>50</sup> USCIRF, *Hearings on China* (Uighur written testimony), 3.

<sup>51</sup> See section B.7 below.

<sup>52</sup> According to Bob Fu, former pastor and house church leader in Beijing who fled China in 1996 and is now studying at Westminster Theological Seminary there are many reasons house churches resist registration.

First of all, the alienation between the house churches and the TSPM [Three-Self Patriotic Movement] has been deeply rooted in the history of the church in China since 1950. Christians in the 1950s witnessed how the government used the TSPM to destroy both the institutional churches established by western missions and indigenous churches founded by Christian believers. Even today in many cases, the TSPM pastors work as informants of house-church activities to the government, resulting in the latter arrests and imprisonment. Thus to the house churches, the TSPM is an agent of the government. House church leaders do not regard the TSPM and the China Christian Council as authentic representatives of the Chinese church. Hence, it is hard for them to be reconciled with their betrayers who are still betraying them. Secondly, once a house church registers with the government and joins the TSPM, its activities are limited to Sunday worship. Even midweek prayer meetings and fellowship groups in believers' homes are forbidden. Thirdly, once a house church registers and joins the TSPM, it can no longer engage in evangelism outside the church building or designated places of church. Finally, the most important reason why house churches refuse to register and join the TSPM is their belief in the lordship of Christ over the church. ‘Who is the head of the church, Christ

unregistered groups to continue without harassment, others have been zealous to the point of abuse in their campaign to force the registration of places of worship. The once thriving religious communities which grew up in the largely unregulated “gray area” between official and proscribed religious activity is disappearing. A national campaign calls for the elimination of unregistered Protestant and unofficial Catholic groups. Mosques, temples, religious schools, and churches, which were established without prior approval, are closed or fined heavily.<sup>53</sup>

Human rights groups report Chinese authorities detained 40 Protestant worshippers in Wugang in October of 1998, at least 70 worshippers in Nanyang in November 1998, and 48 Christians, including Catholics, in Henan in January in 1999. Authorities detained, beat, and fined an unknown number of underground Catholics in Baoding, Hebei in January of 1999.<sup>54</sup> In April 1999, Public Security personnel raided a house church service in Henan where 25 Christians were detained. Seventy-one members of the Disciples Sect were detained in Changying in April 1999. In May 1999 that Hunan authorities cracked down on a group they term a “heretic cult” called “God’s Religion.”<sup>55</sup> The leader of the group, Liu Jiaquo was found guilty of “rape, organizing and using an evil religious organization to undermine the enforcement of state laws, and swindling.”<sup>56</sup> Liu was executed on October 11, 1999.<sup>57</sup> In November, six leaders of

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of the state?’ they would ask. The TSPM accepts the state as the supreme authority over church affairs.

Bob Fu, USCIRF, *Hearings on China*, 58-60.

<sup>53</sup> USCIRF, *Hearings on China* (Spiegel written testimony), 2.

<sup>54</sup> House Committee on Foreign Relations and Senate Committee on Foreign Relations, *Annual Report: International Religious Freedom 1999*, report prepared by U.S. Department of State, 106th Cong., 2d sess., 2000, Joint Committee Print, 107. For more information on repression of Christian groups in Henan see, Puebla Program on Religious Freedom, “Persecution of the Christian Underground in China,”. See note 11 above.

<sup>55</sup> *1999 Religion Reports*, 106.

<sup>56</sup> Cao Guanghui, “Evil ‘Principal God Cult,’” Beijing Xinhua Domestic Service, October 15, 1999 (in FBIS October 17, 1999).

<sup>57</sup> USCIRF, *Hearings on China* (Lu written testimony), 3.

Protestant groups in Henan were sentenced to re-education through labor.<sup>58</sup> Among Protestants, leaders of large house-church networks who, in 1998, challenged the government to a dialogue, have been arrested.<sup>59</sup> Later in the year several prominent house church leaders were briefly detained.<sup>60</sup> Unauthorized Protestant places of worship have also been destroyed.

In an effort to undermine all influence of the Roman Catholic Church within the Patriotic Catholic Church, the CPC Central Committee reportedly issued a 16-page document dated August 16, 1999, calling on authorities to tighten control of the official church and “eliminate the underground Church if [it] does not bend to total government control.”<sup>61</sup> The document reportedly endorses the use of harsh treatment for those who lead “illegal” activities.

In recent months, Chinese Catholic Patriotic Association authorities redoubled efforts to “eliminate underground bishops and bring them under the authority of the Chinese Catholic Patriotic Association.”<sup>62</sup> The CCPA is being introduced into areas in which it never existed before and it is pressing underground bishops for obedience. Without consulting church leaders, authorities reorganized dioceses. Some recently divided dioceses are being re-united and others have been abolished.<sup>63</sup> Many Catholic clergy loyal to the Vatican in recent months have been detained. One, the young auxiliary Bishop Yan Weiping, was detained in May of 1999 while performing an unauthorized mass. He was found dead on a street in Beijing shortly after being released from detention. Officials did not conduct an autopsy and the cause of death is

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<sup>58</sup> AP “Sect Followers Said Tried in Secret,” December 30, 1999.

<sup>59</sup> USCIRF, *Hearings on China* (Lu written testimony), 1.

<sup>60</sup> Human Rights Watch, *World Report 2000*, 181.

<sup>61</sup> Communication from Fr. Bernardo Cervellera, Fides International News Service, April 13, 2000 (reporting on alleged document from the Secretariat of the CPC Central Committee dated August 16, 1999, “Proposals for Reinforcing Pressure on the Catholic Church in the Light of Present Changes.”)

<sup>62</sup> Rev. Drew Christiansen, S. J., Senior Fellow, Woodstock Theological Center, Georgetown University, USCIRF, *Hearings on China*, 171.

<sup>63</sup> *Ibid.*, 63.



unknown.<sup>64</sup> The Vatican reports that five churches, which had been built without authorization, were destroyed. Another 13 were destroyed in the Fuzhou diocese in Fujian.<sup>65</sup>

## 6. Impingements of Religious Freedom for Officially Recognized Groups

Registration is a local procedure. Each place of religious activity is run independently by its own management body under the direction of the RAB, which thus limits associations among religious groups. Under the law, all places of religious activity are supposed to establish their own administrative systems. In practice the autonomy of religious groups varies widely. An examination of available local regulations reveals that there are some variations in the provisions but all fall within the constraints established by the central policy.<sup>66</sup> Human Rights Watch reports that registration oversight of authorized religious groups by these associations entails official scrutiny of membership; ceding some control over selection of clergy; opening financial records to government scrutiny; restricting contacts with other religious institutions; accepting limits on some activities, such as youth or social welfare programs, or building projects; eschewing evangelism; allowing censorship of religious materials and interference with doctrinal thought; and limiting religious activities to religious sites.<sup>67</sup>

The state requires that political indoctrination be an important component of religious training for recognized religious groups. This often comes at the expense of religious education. In addition, authorities have cut by more than half the number of years required for seminary training.<sup>68</sup>

Central authorities took control of the appointment of important religious leaders for both the Catholic church and Tibetan Buddhists. On January 6, 1999, in a very public move, the official church ordained five Catholic bishops without the approval of

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<sup>64</sup> *1999 Religious Reports*, 107.

<sup>65</sup> Reuters, "Campaign against Catholics in China," (January 31, 2000).

<sup>66</sup> See Eric Kolodner, "Religious Rights in China: A Comparison of International Human Rights Law and Chinese Domestic Legislation," *Human Rights Quarterly* 16, 455-490, see especially 473-484.

<sup>67</sup> USCIRF, *Hearings on China* (Spiegel testimony), 27.

<sup>68</sup> Human Rights Watch/Asia, *Continuing Religious Repression in China* (1993), 5-6.

the Vatican. The ordinations occurred in Beijing and not in the appropriate local dioceses. Several of those scheduled to be ordained refused to do so under the strained circumstances. Father Drew Christiansen reports that “The acolyte for the national seminary practiced in preparation for the event, [but] did not appear the morning of the ordination. The seminarians from another institution had to be hurriedly brought in to substitute.”<sup>69</sup>

Authorities restrict the numbers of students in Christian seminaries, Buddhist monasteries, and Islamic schools. They routinely “infiltrate” approved religious groups as is clear from statements at the January 2000 meeting on religious work in Beijing.<sup>70</sup> Authorities limit the number of sites for religious activity. Ye Xiaowen, Director of the Religious Affairs Bureau, recently stated,

We should not build more and more temples and monasteries, and further strengthen religions. We will harm instead of help economic development if we draw the masses’ will and strength to religions, throw money into temples as offerings to Buddha when we have money and run to the temples to seek Buddha’s help when we do not have money.<sup>71</sup>

## **7. Aggressive pro-atheism campaigns**

The CPC now orchestrates an internal propaganda campaign aimed at emphasizing the value of Marxism and operates a second campaign stressing theoretical study, political awareness, and good conduct of Party cadres. A broader public campaign to promote atheism and denigrate religion was also launched in June of 1999. Major newspapers, radio and television broadcasts, party circulars and political meetings have rallied to the cause of promoting atheism. In an article in the November issue of the semi-official journal *Beijing Qiushi* (*Seek Truth*), party leader Li Tieying admonishes citizens not to believe in God.<sup>72</sup> The purpose of this nationwide campaign

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<sup>69</sup> USCIRF, *Hearings on China* (Christiansen testimony), 169.

<sup>70</sup> Li, “Several Policy Issues Concerning Current Religious Work.”

<sup>71</sup> Ye Xiaowen, “Conscientiously Carry out the Religious Work in the New Period—Studying Comrade Jiang Zemin’s Expositions on the Religious Affairs,” *Beijing Qiushi*, 9, May 1, 1999, 18-21 (in FBIS May 24, 1999), 5.

<sup>72</sup> Li Tieying, “Li Tieying Calls for Not Believing in God,” *Beijing Qiushi*, November 1, 1999 (in FBIS November 27, 1999).

to promote Marxist materialism and atheism is to inoculate the masses against the influences of idealism and theism. In 1999 the CPC published a book entitled *Marx, Engels, Lenin, Stalin, Mao Zedong, Deng Xiaoping, and Jiang Zemin on Materialism and Atheism*. Selections were printed in newspapers across the country.<sup>73</sup> A recent series of articles in the *Renmin Ribao* lauds atheism. It is unclear whether this propaganda will have its intended result of turning the masses away from religious belief to atheism.

### C. Principal Regulations and Directives Governing Religious Affairs

The Constitution of the People's Republic of China restricts the scope of religious freedom and establishes the State's authority to regulate religious activities.

In our country, citizens may believe in religion or disbelieve, but politically they have one thing in common, that is, they are all patriotic and support socialism . . . . The State protects legitimate religious activities, but no one may use religion to carry out counter-revolutionary activities or activities that disrupt public order, harm the health of citizens, or obstruct the educational system of the State [and] no religious affairs may be controlled by any foreign power.<sup>74</sup>

This provision of the Constitution reflects the communist government's longstanding belief that it must manage and control religion. Except during the Cultural Revolution (1966-76), the CPC's policy has been to regulate closely some religious activity rather than to abolish religion altogether. While atheism is a basic tenet of China's Marxist system, limited religious activity under the direction of the state has been tolerated when it is not perceived to be a threat. Still, between 1982 and 1989, China's approach to managing religion, while restrictive of certain religious activities, can be seen relatively as emphasizing cooperation over control.<sup>75</sup> During this period a significant

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<sup>73</sup> See for example, "Mao Zedong, Deng Xiaoping, and Jiang Zemin on Materialism and Atheism," *Beijing Renmin Ribao*, August 9, 1999 (in FBIS August 11, 1999).

<sup>74</sup> 1982 Constitution of the People's Republic of China, chapter 2, article 36, translation quoted in Goldstein and Kapstein, *Buddhism in Contemporary Tibet*, 3.

<sup>75</sup> See Secretariat of the Central Committee, Document No. 19, in Human Rights Watch/Asia, *Freedom of Religion in China*, appendix 2, 42.

The era following the Cultural Revolution required clarification of religious

amount of religious activity developed outside the bureaucratic management structures of the state. Local authorities were charged with implementing the broad policy set forth by the Standing Committee of the Politburo and the State Council with the result that in practice the various provinces and counties tolerated different levels of autonomy and control of religious activity.<sup>76</sup>

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policy. Within the document can be found the concerns that continue to guide management of religious affairs today, including calls for the re-establishment of the RAB at local and provincial levels and the reconstitution of “patriotic” mass organizations for recognized religions. It encourages provincial and municipal authorities to create appropriate regulations based on local conditions; calls for a limited campaign to reopen and rebuild mosques, churches, and temples; encourages “beneficial international exchanges” while cautioning against “infiltration by hostile foreign elements” and defines “normal” and “protected” religious activities to include:

Buddha worship, scripture chanting, incense burning, prayer, Bible study, preaching, Mass, baptism, initiation as a monk or nun, fasting, celebration of religious festivals, extreme unction, funerals, etc.—are all to be conducted by religious organizations and religious believers themselves, under protection of law and without interference from any quarter.

“Abnormal” religious activities include: secret societies, sorcery, witchcraft, scams operated under the guise of religion, criminal and anti-revolutionary activities which hide behind the facade of religion which includes superstitious practices. It reiterates the policy that CPC members must be atheists and endorses public campaigns to criticize theism. Finally, the document promises that these policies will be firmly established by law.

<sup>76</sup> Dr. Kim-Kwong Chan, Executive Secretary of the Hong Kong Christian Council illustrates this point with the following example:

On the one hand, there many cases that have been expressed by other witnesses and reports of gross abuse of religious freedom in many cases. In other cases it seems to be the implementation of the religious policy that is more relaxed than what we have been hearing; for example, there is a county right in the border of Mylan and Burma. . . Amongst the 85,000 population in those regions, 80 percent of those are Christians; and there were 273 religions and 273 churches there. Whenever the government wants to do anything, they have to consult the church. And this happens in China. And the former government [included] an elder of the church. So in that particular county, it seems that the church has a

Since 1989, against the backdrop of Tiananmen Square and the collapse of the formerly communist states of central and eastern Europe, the government of China and the CPC have sought to bring all religious activity under their control and taken an increasingly strict and punitive attitude toward forms of religious and other expression that are not expressly authorized and managed by Chinese authorities.<sup>77</sup> The keystone of the centralized control of religion is the current policy that requires registration of *all* religious activity.<sup>78</sup> Religious activity of foreigners is strictly regulated.<sup>79</sup> Regulations

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strong domination over the politics, the local politics. but in a neighboring county within the same prefecture. . . there are several thousand Christians but they were not even allowed to register. Although they offer [to meet] the requirement of registration, in spite of the intervention of the government, the local government refuses to recognize the presence of Christians, and even the believers' houses are being burned down regularly.

USCIRF, *Hearings on China*, (Chan testimony), 75-76. Father Drew Christiansen S.J. also notes that persecution of underground congregations varies significantly by region “and is particularly strong in a few regions of Hebei.” See USCIRF, *Hearings on China* (Christiansen testimony), 169.

<sup>77</sup> Central Committee of the CPC and the State Council, Document No. 6, “On Some Problems Concerning Further Improving Work on Religion” (1991) in Human Rights Watch/Asia, *Freedom of Religion in China*, appendix I, 30-35. After reminding local officials to “respect and protect” the freedom of religion, Document No. 6 is infused with concern for “social stability” and spells out means for tighter administrative control. The RAB must push administrative control down to the county or even township level. Groups must register and be brought under government supervision. Local authorities should promulgate regulations for the control of religions. New sites for religious activity require government approval. Governments at all levels need to have management of religious activity as an important item on the agenda. The PSB is to take forceful measures to curb use of religion for activities that threaten social order.

<sup>78</sup> See Li “Several Policy Issues Concerning Current Religious Work,” 2.

<sup>79</sup> See Order of State Council No. 144, “Regulations on the Supervision of the Religious Activities of Foreigners in China,” (January 31, 1994), in Human Rights Watch/Asia, *China: State Control of Religion* (1997), appendix VII, 106-108. This order defines the scope of religious activity allowed to foreigners and the relationship to foreigners and the Chinese religious groups. Foreigners may not proselytize Chinese but may preach to other foreigners. They may not interfere in China’s religious affairs,

target specific types of religious organization, including the Chinese Catholic Church,<sup>80</sup> Muslim religious activities in Xinjiang,<sup>81</sup> and organizations like the Falun Gong that are pejoratively labeled “cults.”<sup>82</sup> Atheism must be taught in schools.<sup>83</sup> In addition to

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establish offices in China, or build monasteries, Taoist temples or churches. Religious publications, audio and video tapes and other propaganda materials from abroad must be “strictly controlled according to rules laid down by the government departments concerned.” Religious groups must get permission from authorities at the provincial level prior to accepting foreign funds or inviting “very influential religious personages.”

<sup>80</sup> See Central Office of the CPC and the State Council, Document No. 3, “Circular on Stepping up Control Over the Catholic Church to Meet the New Situation,” (1989) in Human Rights Watch/Asia, *Freedom of Religion in China* (1992), appendix 3, 49-54.

<sup>81</sup> See CPC Central Committee, Document No. 7, “Record of the Meeting of the Standing Committee of the Politburo on the Chinese Communist Party Concerning the Maintenance of Stability in Xinjiang” (1996) in Human Rights Watch/Asia, *China: State Control of Religion*, Update 1 (1998), appendix I, 9.

<sup>82</sup> Article 300 of the Criminal Code, amended in 1997, and the People's Congress Anti-Cult Decision of 1999 stipulate punishment for organizers and for those who make use of “superstitious sects or cults” and “evil religious organizations.” The law gives central authorities of the state and CPC power to decide, “on whatever grounds they choose, to legitimize or delegitimize a particular belief system.” USCIRF, *Hearings on China*, (Spiegel testimony), 25. See also Xinhua, “NPC Explains Draft Anti-Cult Decision,” October 30, 1999 (in FBIS October 31, 1999).

<sup>83</sup> Religious activity “may not obstruct the educational system of the state.” Atheism must be an integral part of school curriculum. Minors under age of 18 are to be protected from religious influence. Any expression of religious belief by faculty or student is considered interference with education. The fact that large numbers of students are “regular believers” is cited as evidence that their education has been tampered with. Any religious instruction to youth, inside of school or out, can be interpreted as a challenge to this authority. See State Education Commission, “Notice on the Prevention of Some Places Using Religious Activities to Hinder School Education” (August 5, 1991) in Human Rights Watch/Asia, *Freedom of Religion in China* (1992) appendix VII, 71-73.

controlling the legal rules governing religious activities, CPC policy demands an increased infiltration of even those religious organizations that have been approved by the government.

We should raise the percentage of nonparty advanced elements and activists in religious circles, especially in religious key leadership. (For Christianity, we should raise the percentage of nonparty advanced elements and activists from 3.0 percent to between 7.5 and 9.0 percent. For Catholicism, we should raise their percentage from 3.8 percent to between 8.0 and 9.0 percent.)<sup>84</sup>

Only those beliefs that are approved by the government are permitted, and the government will even spy on those religious activities that it has authorized.

#### **D. Conclusion**

China claims to be moving toward “rule according to law.” As Chinese president Jiang Zemin explains it, this means transforming the CPC’s ideas into statutes.<sup>85</sup> These regulations then become primary instruments of state control. Recent regulations regarding religious activity begin to clarify official limits to “normal religious activity” and show Chinese authorities to be in severe violation of international norms for freedom of religion and belief. For all the CPC’s touting of its progress toward “rule according to law,” many important local and central documents regulating religious activity are highly classified (such as the August 16, 1999 circular on managing the underground Catholic Church). Policy regarding religion is thus cloaked in secrecy--the antithesis of the rule of law. Furthermore, most cases of religious “offenders” are handled through the extra-legal procedures of China’s reeducation through labor system. The accused are denied even the rudimentary elements of due process now allowed to criminal offenders.

Chinese authorities choose to view the ongoing explosion of religious activity as a danger to social stability. The current tensions in Chinese society are expressed in a Chinese saying: *yi fang jiu luan; yi jua jiu si*, “relaxing control results in chaos; grasping too tightly causes death.” China’s communist leadership consistently chooses

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<sup>84</sup> Li, “Several Policy Issues Concerning Current Religious Work.”

<sup>85</sup> Li Zhongjie, “Theories and Practice of the Building of Legal System over the Past 20 Years--Part four of the special articles marking the 20th anniversary of the Third Plenary Session of the 11th Party Committee,” *Beijing Renmin Ribao* December 3, 1998, 10 (in FBIS December 25, 1998).

to tightly control social forces it perceives to be threatening. In recent months, the CPC has increased control over media content and distribution, internet use, political groups, social organizations, and especially religious activity. These are forces that in other countries would be considered indicators of a healthy civil society. There is little reason to hope that in the near term the People's Republic of China's evolution to "rule according to law" alone will mean improvements for religious liberty. Advances in freedom of religion and belief will require not just a shift in the tactics of governance but meaningful political reform.



## **CHAPTER FOUR: THE RUSSIAN FEDERATION**

### **A. Background**

#### **1. The Reason to Focus on Russia**

Throughout the 20th century, Russia – as the political, military, educational, and cultural center of the former Soviet Union – wielded an influence far beyond its borders. Its dominance extended not only over the 14 other republics of the former Soviet Union, but over the Communist states of Central and Eastern Europe. The Soviet Union's political, economic, cultural, and military influence extended to many countries of Asia, Africa, and Latin America.

Although the influence of Russia has diminished considerably since the collapse of the Soviet Union in 1991, it nevertheless continues as one of the most powerful actors on the world's stage. Russia remains the dominant regional influence – for better or for worse – throughout Eastern Europe, the Caucasus, and Central Asia. Russia also is a center of Orthodox Christianity, with the Russian Orthodox Church being by far the largest and most influential of all of the Slavic Orthodox churches.

Along with the other republics of the former Soviet Union and the formerly Communist states of Central and Eastern Europe, Russia is now grappling with the extraordinarily difficult task of transforming its economic, legal, political, and social systems away from ideologically driven state control toward systems based on democratic principles. Therefore, the ways in which Russia deals with questions of legal reform, human rights, and religious freedom will have a disproportionate effect throughout its sphere of influence.

The religious-freedom situation in Russia is not comparable to that of China or Sudan (notwithstanding the current situation in Chechnya). Nevertheless, focusing on religious freedom in Russia is important because of: (a) Russia's influence in the region, (b) the possibility that the conditions of religious freedom could deteriorate significantly in the near future, and (c) the opportunity the United States has to promote religious freedom in Russia. It thus behooves the United States to pay particularly close attention to the situation of religious freedom in Russia.

#### **2. General Assessment of the Status of Religious Freedom in Russia**

The protection of freedom of religion or belief in Russia today is dramatically better than under communism. Members of many faiths now freely worship without fear of legal or political repercussions. Churches, mosques, monasteries, and religious

schools are being built or restored throughout Russia. Religions are generally free to publish and distribute their literature without legal interference. The federal government of the Russian Federation has taken several positive steps to promote freedom of religion and belief.

Unfortunately, the Russian Federation took a significant step backward in 1997 by enacting a law “On Freedom of Conscience and on Religious Associations” (1997 Religion Law). The 1997 Religion Law replaced legislation adopted in 1990 that provided broad legal protections for the exercise of the right to freedom of religion and for the equality of religious communities. The 1997 Religion Law creates a hierarchy of religious organizations and restricts the rights, powers, and privileges of smaller, newer, and foreign religious communities. It also establishes an onerous and intrusive registration process and other mechanisms of state interference with the activities of religious organizations. The actual implementation of the 1997 Religion Law by the federal authorities, and an interpretation of the law rendered last November by Russia’s Constitutional Court, have mitigated some negative effects on religious freedom.

On March 26, 2000, President Putin quietly signed an amendment to the 1997 Religion Law that contained one positive and one very negative provision. On the positive side, it extended the registration deadline for religious organizations by one year until December 31, 2000. On the other hand, the law now *requires* that non-registered groups be “liquidated” after that date. (The original law provided only that unregistered groups *could* be liquidated.) It bears close watching whether Russian officials, at all levels, will make good faith efforts to register religious groups and whether unjustifiable liquidations will take place in 2001. In addition, in January 2000, President Putin signed an important directive specifying that one of the measures necessary to protect Russian national security is a “state policy to maintain the population’s spiritual and moral welfare and counter the adverse impact of foreign religious organizations and missionaries.”

Regional officials implementing the 1997 Religion Law have denied registration and sought the liquidation of unpopular religious communities – including Baptists, Pentecostals, Charismatic churches, Jehovah’s Witnesses, Roman Catholics, Mormons, Seventh-day Adventists, and Orthodox groups not associated with the Moscow Patriarchate – in some cases using panels of “experts” to examine the beliefs and activities of the targeted group.

Also on the regional level, some officials have harassed and interfered with the activities of religious communities, preventing them from renting suitable places for worship, distributing religious publications, and conducting religious education. Protestant, Catholic, and Muslim indigenous believers and foreign missionaries have

been harassed by security officials, and even expelled, for propagating their faith. In addition, one-third of Russia's constituent regions have enacted legal regulations on religious activities that are more restrictive and discriminatory than the 1997 Religion Law and that violate the Russian Constitution. The federal authorities have been unwilling, or unable, to discipline local officials or to bring these regional laws into compliance with the Russian Constitution and international human rights standards.

While the conflict in Chechnya is primarily political and ethnic in nature, religion appears to play a role on both sides. Chechens are Muslims and Islam is a part of their nationalistic identity. Russian authorities, meanwhile, have played upon deep-seated and historic prejudices against Muslims to rally domestic support for the war, portraying Islam and Muslims as synonymous with terrorism and extremism.

Four widely shared attitudes in Russia exacerbate the impact of the defects in the legal system (and ultimately may be more significant to the protection of religious freedom). *First*, many hold prejudices against ethnic and religious minorities, including, most importantly, Muslims, Jews, and various Christian groups other than the Russian Orthodox Church. *Second*, among many Russians, longstanding nationalistic resentment against "foreign influences" affects the treatment of religious groups that are perceived to have strong foreign ties (such as Roman Catholics, Protestants and some Muslim groups). *Third* is the related belief among some that the Russian Orthodox Church, or the "traditional" religions of Russia, should be accorded special privileges and protection in contrast to smaller, newer, and "foreign" religious groups. *Fourth*, many Russians do not see the law as a means to protect human rights.

### **3. Religious Demography**

The Russian Federation is a federal system comprised of 89 constituent regional entities with a total estimated population, as of 1998, of approximately 147,000,000.<sup>1</sup> Russia's population includes dozens of indigenous ethnic groups and numerous religious communities representing most of the world's major religions.

Recent opinion surveys report that slightly more than half of all Russians consider themselves to be religious believers, a substantial increase since 1991.<sup>2</sup>

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<sup>1</sup> Barry Turner, ed., *The Statesman's Yearbook* (2000), 1313.

<sup>2</sup> See, e.g., Associated Press, "Survey Finds Religious Beliefs Re-emerging in Russia," April 8, 2000 (60 percent of Russians born after 1970 say they believe in God); Russian Public Opinion and Market Research, "Attitude of Russians Toward

However, because reliable and comprehensive statistics are not available, it is difficult to determine with any certainty the numbers of adherents of different religious communities in Russia today, or trends in the absolute growth of religious believers or changes in religious adherence since the fall of communism.<sup>3</sup> It is also difficult to determine the level to which those who consider themselves believers engage in religious practices or are familiar with basic religious doctrine. The estimates used in this section are derived from a number of different sources, including religious communities themselves.

*Russian Orthodox.* Roughly 50 percent of the population identifies itself as Russian Orthodox.<sup>4</sup> Less than half of those identifying themselves as Orthodox attend church services, and only a small percentage appear to be familiar with basic Orthodox beliefs.<sup>5</sup> As discussed below, Orthodoxy is widely believed to constitute an essential part of Russian national and ethnic identity. Since 1988, the number of Russian Orthodox parishes, monasteries, and theological schools has increased dramatically.<sup>6</sup>

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Religion,” January 31, 2000 (60.1 percent of Russians from 41 regions say that they are religious believers, 26.9 percent consider themselves nonbelievers, 4.4 percent are convinced atheists, and 8.6 percent were not able to answer) (<http://www.stetson.edu/~psteeves/relnews/0002a.htm> accessed April 14, 2000). See also Andrew Greeley, “A Religious Revival in Russia?,” *Journal for the Scientific Study of Religion* 33 (1994): 253-72.

<sup>3</sup> Russia has not performed an official census of its population since 1989. The 1989 census did not record religious identity. The Russian government has posted some statistics on the Web site of its embassy in the United States, but the source of these statistics is not identified.

<sup>4</sup> See Aleksandr Morozov, “Skolko Pravoslavnikh v Rossii?” (How many orthodox believers are there in Russia?), *Nezavisimaya gazeta*, November 20, 1997 (<http://www.sobor.ru/articles/default.asp?id=3> accessed April 11, 2000).

<sup>5</sup> See *ibid.*; House Committee on International Relations and Senate Committee on Foreign Relations, *Annual Report: International Religious Freedom 1999*, report prepared by U.S. Department of State, 106th Cong., 2d Sess., “Russia,” 294; Mark Elliott and Anita Deyneka, “Protestant Missionaries in the Former Soviet Union,” *Emory International Law Review* 12 (1998): 361-412, 385.

<sup>6</sup> According to the Moscow Patriarchate, the Russian Orthodox Church currently

*Muslims.* Islam is identified in the 1997 Religion Law as one of the four “traditional” religions of Russia, and Muslims are the second-largest religious community in Russia. Muslims in Russia are predominantly Sunni, although many also have ties to Sufi movements.<sup>7</sup> Estimates of Muslims in Russia range between 12-20 million, roughly 8-12 percent of the population.<sup>8</sup> The largest Muslim ethnic groups are located in Tatarstan, Bashkortostan, and in the regions of the North Caucasus (Muslims make up the overwhelming majority of the population in the North Caucasus regions).<sup>9</sup> In 1989, there were approximately 1 million Muslims in Moscow.<sup>10</sup> As with the Russian Orthodox Church, there has been a dramatic growth of officially-recognized Muslim institutions since 1991, leading some observers to conclude that there is growing interest in Islamic culture, practice and education.<sup>11</sup>

*Other Orthodox.* The Old Believers, who separated from the main body of the Russian Orthodox Church in the 17th century, are the second-largest Orthodox

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has 128 dioceses (in comparison with 67 in 1989), nearly 19,000 parishes (6,893 in 1988), and nearly 480 monasteries (18 in 1980). See “The Russian Orthodox Church Today,” ([http://www.russian-orthodox-church.org.ru/today\\_en.htm](http://www.russian-orthodox-church.org.ru/today_en.htm) accessed April 19, 2000).

<sup>7</sup> “Religious Persecution in the Soviet Union,” Department of State Bulletin (November 1986), available in Lexis, News Library, News Group File (statement by Edward J. Derwinski, Counselor of the Department of State, before the Subcommittees on Human Rights and International Organizations and on Europe and the Middle East of the House Foreign Affairs Committee on July 30, 1986).

<sup>8</sup> Donna E. Arzt, “Proselytizing and the Muslim *Umma* of Russia,” in John Witte Jr. and Michael Bourdeaux, eds., *Proselytism and Orthodoxy in Russia: The New War for Souls* (1999): 108 - 140, 118; Donna E. Arzt, “Historical Heritage or Ethno-National Threat? Proselytizing and the Muslim *Umma* of Russia,” *Emory International Law Review* 12 (1998): 413-475, 475; Alexei D. Krindatch, *Geography of Religions in Russia* (1996), 10.

<sup>9</sup> Tatiana Varzanova, “Confessions,” *Nezavisimaya gazeta*, December 11, 1996 (<http://www.stetson.edu/~psteeves/relnews/islameng111.html> accessed April 28, 2000).

<sup>10</sup> Arzt, “Proselytizing and the Muslim *Umma*,” 124; Varzanova, “Confessions.”

<sup>11</sup> Arzt, “Proselytizing and the Muslim *Umma*,” 120-24; Rafik Mukhammetshin, “Borba za vlast pered litsom gosudarstva,” *NG-Religii*, February 18, 1998.

community in Russia.<sup>12</sup> The True Orthodox Church and the Free Orthodox Church, who separated from the Russian Orthodox Church during the Soviet period, are smaller communities, together comprising around 200 parishes.<sup>13</sup>

*Non-Orthodox Christians.* There are an estimated 2 million Protestants throughout Russia.<sup>14</sup> Baptists are the largest Protestant group, and the major Baptist organization, the Union of Evangelical Christians/Baptist, has approximately 850,000 members.<sup>15</sup> Other Christian denominations include Presbyterians, Lutherans, Methodists, Mennonites, Seventh-day Adventists, Christian Scientists, the Church of

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<sup>12</sup> In official statistics released in 1991, Old Believers made up 0.8 percent of the population of the Soviet Union. See Aleksandr Shchipkov, "Interreligious Relations in Russia after 1917," in Witte and Bourdeaux, eds., *Proselytism and Orthodoxy in Russia*, 77-92, 84.

<sup>13</sup> The True Orthodox Church was organized during the Soviet period as a response to the submissiveness of the Russian Orthodox Church to the Soviet authorities. The Free Orthodox Church was organized after the collapse of the Soviet Union as a part of the Russian Orthodox Church Outside of Russia. Both churches have had ongoing problems with the Moscow Patriarchate. See, e.g., Roman Lunkin, "Russia: Orthodox Against Orthodox in Voronezh," *Keston News Service*, March 3, 2000; Dimitry V. Pospelovsky, "The Russian Orthodox Church in the Postcommunist CIS," in Michael Bourdeaux, ed., *The Politics of Religion in Russia and the New States of Eurasia* (1995): 41-47, 46; Michael R. Gordon, "Chafing Faith in Russia's Onion Dome," *New York Times*, October 12, 1997; Michail Sitnikov, "Podzakonniy act – chto dyshlo...," *Russkaya Mysl*, January 8-14, 1998; Russia Intercessory Prayer Network, "Clerics of Russian Orthodox Free Church Subjected to Violence," January 31, 1997 (<http://www.ripnet.org/clerics.htm> accessed April 11, 2000).

<sup>14</sup> See Russian Embassy in the U.S., "Religion in Russia" (<http://www.russianembassy.org/RUSSIA/religion.htm> accessed April 5, 2000), reprinted in "Official Statistics on Religion in Russia," (<http://www.stetson.edu/~psteeves/relnews/9804a.html#09> accessed April 14, 2000).

<sup>15</sup> See "Baptist Union to Change Charter in Keeping with New Law," *ITAR-TASS, Pravoslavie v Rossii*, February 13, 1998 (<http://www.stetson.edu/~psteeves/relnews/9802a.html#08> accessed April 14, 2000).

Jesus Christ of Latter-Day Saints, and various Pentecostal churches.<sup>16</sup> There are about 250,000 Jehovah's Witnesses.<sup>17</sup>

It is estimated that there are approximately 1,300,000 Roman Catholics in Russia, many of whom are ethnic Lithuanians, Poles, and Germans.<sup>18</sup> During the Soviet period, these communities were forcibly relocated from European Russia to areas in Siberia and Central Asia. Between 1993 and 1998, 123 Russian bishops were ordained by the Vatican.<sup>19</sup> The number of Catholic communities registered in Russia grew from 23 in 1990 to 183 in 1996.<sup>20</sup> There are also small communities of Eastern Rite Catholics.

A number of native Russian, primarily Christian groups, such as the Molokan, Dukhobors, and others, reside in the Kazan, Tambov and Briansk regions and, at present, have experienced local revivals. Stundists, a group formed under the influence of German Baptists in the second half of the 19th century, live in southern Russia.

*Jews.* Judaism is identified in the 1997 Religion Law as one of the four "traditional" religions of Russia. There are no reliable statistics on the numbers of Jews in Russia today, and recent estimates range from 400,000 to 700,000 (but some consider such estimates to be low).<sup>21</sup> The 1989 census counted approximately 1.5 million ethnic

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<sup>16</sup> See Shchipkov, "Interreligious Relations," 86; Russian Embassy, "Religion in Russia."

<sup>17</sup> See Alexandra Samarina, "Jehovah's Witnesses on Trial," *Obshchaya gazeta*, October 8, 1998 (<http://www.stetson.edu/~psteeves/relnews/9810a.html> accessed April 26, 2000).

<sup>18</sup> See Russian Embassy, "Religion in Russia."

<sup>19</sup> See *ibid.*

<sup>20</sup> See Shchipkov, "Interreligious Relations," 86.

<sup>21</sup> See Anti-Defamation League, "The Reemergence of Political Anti-Semitism in Russia: Russian Jewish Community," ([http://www.adl.org/russia/russian\\_political\\_antisemitism\\_4.html](http://www.adl.org/russia/russian_political_antisemitism_4.html) accessed April 25, 2000) (500,000 as of 1999); Library of Congress, "Federal Research Division Country Studies: Russia," (<http://lcweb2.loc.gov/frd/cs/rutoc.html> accessed April 14, 2000) (700,000 as of 1995); Yuriy Tabak, "Relations between Russian Orthodoxy and Judaism," in Witte and Bourdeaux, eds., *Proselytism and Orthodoxy in Russia*, 149 (400,000 as of 1993, citing *Kratkaya Yevreiskaya Entsiklopedia* (Concise Jewish Encyclopedia) (Jerusalem, 1994)).

Jews in the Soviet Union, but this figure is believed to be low as well.<sup>22</sup> Large numbers of Russian Jews have emigrated from the former Soviet Union since 1989, including 800,000 that have gone to Israel.<sup>23</sup> Most Jews are concentrated in Moscow and St. Petersburg, but there are Jewish communities scattered throughout much of the country.<sup>24</sup>

*Buddhists.* Buddhism, which also is identified in the 1997 Religion Law as one of the four “traditional” religions of Russia, is present in the Buryatya, Kalmykia, Tuva, Irkutsk, and Chita regions.<sup>25</sup> The schools of Buddhism represented are those found in Himalayan India, Mongolia, and Tibet. Among Buddhist communities, there is a growing interest in religious education and practice, communication with foreign Buddhist communities, and the production of Buddhist publications and periodicals.<sup>26</sup> According to official statistics, there are presently 10 Buddhist monasteries in Russia, with a total monastic body of approximately 200 people, and another 10 monasteries are currently under construction.<sup>27</sup>

*Other religious groups.* Shamanism is recognized as an important religion in

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<sup>22</sup> See John-Thor Dahlburg, “To Go or To Stay?; Soviet Jews, Caught Up in the Turmoil of *Glasnost* and Resurgent Anti-Semitism, Face the Decision of a Lifetime,” *Los Angeles Times*, August 25, 1991; Herb Keinon, “60,000 Jews Ready to Leave Immediately,” *The Jerusalem Post*, April 20, 1991 (citing Jewish Agency estimate of 3 million Jews in Soviet Union in 1991).

<sup>23</sup> See Lev Krichevsky, “Russian Aliyah Heads Toward Highest Since ‘92, Agency Says,” *Jewish Telegraphic Agency*, July 14, 2000 (<http://www.jafi.orgjl/papers/1999/july/itajuly14.htm> accessed April 28, 2000).

<sup>24</sup> See Union of Councils for Soviet Jews, *Anti-Semitism, Xenophobia and Religious Persecution in Russia's Regions: 1998-1999* (1999), 5-187; Krindatch, *Geography of Religions in Russia*, 63, 67-68.

<sup>25</sup> Saiana Namsareva, “Is it Useful to be Born in Russia?” *NG - Religii*, December 8, 1999 (<http://www.stetson.edu/~psteeves/relnews/9912d.html> accessed April, 28, 2000).

<sup>26</sup> See Namsareva, “Is it Useful to be Born in Russia”.

<sup>27</sup> See Russian Embassy, “Religion in Russia.”



the northeastern Russian regions, such as Tuva and Buryatia.<sup>28</sup> There are three Shamanist organizations uniting 250 shamans in the Tuva region.

Various new religious movements, including the Unification Church, the Church of Scientology, the Society of Krishna Consciousness, the White Brotherhood, and Aum Shinrikyo, have spread in Russia since 1990.<sup>29</sup>

#### 4. Historical Background of Religion and the State in Russia

In order to understand religious freedom in Russia in the 21st century, it is important to take note of Russian religious history and the historical relationships between the state and religious communities, in particular the Russian Orthodox Church.

*Christianity and the formation of the Russian national consciousness.* In 988, Prince Vladimir of Kiev adopted Christianity, which he subsequently used as a vehicle to unite the Slavic tribes living in the land known as Kievan Rus'. Vladimir's adoption of Orthodox Christianity is now commonly understood as the beginning of the Russian nation. Vladimir's conversion exposed the Russian tribes to the Byzantine world. The Byzantine view that political and religious interests support and justify one another became an important part of church-state relations in Russia by the 16th century.<sup>30</sup> Although after 70 years of communism it is by no means a uniform view in Russia today, a substantial number of Russians affirm a close connection between the Russian Orthodox Church, the Russian people, and the Russian state.<sup>31</sup> A recent statement by

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<sup>28</sup> See Namsareva, "Is it Useful to be Born in Russia."

<sup>29</sup> See Anatoly Krasikov, "From the Annals of Spiritual Freedom: Church-State Relations in Russia," *East European Constitutional Review* 7, no. 2 (1998): 75-84, 76. The White Brotherhood was reported to have 10,000 adherents in the former Soviet Union in 1993. See Pospelovsky, "Russian Orthodox Church," 73, n.53. In 1995, it was reported that there were more than 50,000 adherents of Aum Shinrikyo in Russia. Viktor Polupanov, "Novye Sectanty," *Argumenty i Fauty* 13 (March 1995).

<sup>30</sup> See Timothy Ware, *The Orthodox Church*, new ed. (1997), 113.

<sup>31</sup> For historical reviews of Church and State in Russian history, see Firuz Kazemzadeh, "Reflections on Church and State in Russian History," in Witte and Bourdeaux, eds., *Proselytism and Orthodoxy in Russia*, 227-38; Steven Runciman, *The Orthodox Church and the Secular State* (1971), 45-67, 82-93; Ware, *The Orthodox Church*, 73-86, 105-25, 145-71; Nicolas Zernov, *The Russians and Their Church*, 3rd

President Vladimir Putin is a typical expression of this view:

Orthodoxy has traditionally played a special role in Russian history. . . . It has been not only a moral touchstone for every believer but also an unbending spiritual core of the entire people and state. . . . Orthodoxy has largely determined the character of Russian civilization.<sup>32</sup>

*Split of the Old Believers and the spread of sectarianism.* Seventeenth-century Russia witnessed a dramatic split between the main body of the Russian Orthodox Church and a group that came to be known as Old Believers (or *staroverstii*).<sup>33</sup> The Old Believers opposed “foreign” (*i.e.* Greek) influences on the Russian church and the Russian state, but did not oppose the union of church and state. The split of the Old Believers led to intense persecution against them and the creation of fragmented communities along the Volga River and parts of Siberia. The 17th century split has left a historical memory among some Russian Orthodox believers of the societal upheavals that can result from charges of schism and challenges to the authority of the Church.

*Religious reforms of Peter the Great.* In 1721, Peter the Great abolished the Moscow Patriarchate and established complete state control over the governance and internal affairs of the Russian Orthodox Church. These changes were made in order to use the Church as an instrument of state power, and led to its supremacy as the religion of the Russian state.<sup>34</sup> The Church’s subordination to the state at this time led to a split between its worldly role and its spiritual role, and in the latter the Church became focused on its internal affairs, the development of ritual, and the preservation of tradition and a collective cultural identity.<sup>35</sup> During this period, other religions were

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ed. (1978).

<sup>32</sup> “Putin Hopes Orthodox Christianity Will Strengthen Russia,” *Interfax*, January 6, 2000 (<http://www.stetson.edu/~psteeves/relnews/0001a.html#07> accessed February 10, 2000).

<sup>33</sup> See Ware, *The Orthodox Church*, 109-14.

<sup>34</sup> George S. Florovsky, *Ways of Russian Theology: Part One*, vol. 5, *The Collected Works of George S. Florovsky* (1979), 118.

<sup>35</sup> *Ibid.*, 115, 122.

“tolerated” by the state, including Islam, Judaism, Buddhism and some other “foreign” Christian groups (such as Roman Catholicism and Lutheranism).<sup>36</sup> However, a 1895 law prohibited a change in religious confession away from the Russian Orthodox Church and proselytism by all other religious groups.<sup>37</sup>

*Steps toward greater toleration.* Beginning in 1905, the relationship of the Russian Orthodox Church and the state underwent a dramatic change, one that had positive effects on religious freedom. The Czar’s representative remained at the head of the Church, but steps were taken to disentangle its internal administration from state control. In 1905, a law on religious toleration granted Russians the rights to leave the Russian Orthodox Church, to raise their children in the religion of their choice, and not to be classified as Orthodox against their will. This law also granted new rights to Old Believers and sectarians, and to adherents of foreign Christian denominations, including the right to build places of worship and to provide religious education to children.

*The Soviet Period.* With the establishment of Soviet authority after 1917, collective religious activity independent of state control was suppressed and believers were subjected to intense pressures to abandon their faith. The Moscow Patriarchate had been restored just prior to the consolidation of Soviet authority, but strict control was maintained over it and other religious institutions by the newly created State Council for Religious Affairs.<sup>38</sup> A 1918 decree officially separated the Russian

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<sup>36</sup> Groups that were considered to be “schismatics” from the Russian Orthodox Church, such as the Old Believers, were heavily persecuted during the Czarist period (1589-1917).

<sup>37</sup> See Harold J. Berman, “Religious Rights in Russia at a Time of Tumultuous Transition: A Historical Theory,” in Johan D. van der Vyver and John Witte, Jr., eds., *Religious Human Rights in Global Perspective Legal Perspectives* (1996), 285-304, 287-88. Krasikov, “Church-State Relations in Russia,” 75.

<sup>38</sup> Albert Boiter, “Law and Religion in the Soviet Union,” *The American Journal of Comparative Law*, 35 (1987): 97-126, 107.

Following the election of Patriarch Tikhon in 1917, a reformist movement began within the Russian Orthodox Church, called the “Living Church,” which sought to adapt the Orthodox faith to the political goals of the Bolsheviks. Although the Living Church had close ties to the Bolsheviks, it had little popular support and died out in the late 1920’s. See Runciman, “Orthodox Churches and the Secular State,” 85-86. In light of

Orthodox Church from the state. All religious organizations were denied legal personality and their property was confiscated by the state. Formal teaching of religion was prohibited (except in a few approved and regulated seminaries). Religious organizations were forbidden from engaging in almost all activities except worship in officially-sanctioned places.<sup>39</sup> Soviet policy on religion was directed toward “liberating the minds of the toiling masses from religious prejudices.”<sup>40</sup>

The Soviet period was characterized by fluctuating levels of limited toleration and severe repression of religious activities, but constant control of religious institutions by the state and Communist Party operatives. Even during periods of relative toleration, however, restrictive laws remained in force.

During the 1920s and 1930s, members of the religious hierarchy and clergy were imprisoned or killed and virtually all churches, monasteries, and seminaries were closed.<sup>41</sup> Stalin’s 1943 reverse in policy permitted a major reconstruction of Russian Orthodox Church institutions, although social work and the religious education of children was still prohibited. Khrushchev reversed this liberalization in 1959, when he launched a wave of intense persecution reminiscent of the 1920’s. During this period, clergy were imprisoned, churches and educational institutions were closed, and lay Orthodox intellectuals were harassed.<sup>42</sup> As a result of Khrushchev’s repressive policies,

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its experience with the Living Church reformist movement, the post-Soviet Russian Orthodox Church views with suspicion attempts to adapt to current political conditions. See Edward E. Roslof, “The Heresy of ‘Bolshevik’ Christianity: Orthodox Rejection of Religious Reform During NEP,” *Slavic Review* 55 (1996): 614-35.

39 See Ware, *The Orthodox Church*, 146-47.

<sup>40</sup> Boiter, “Law and Religion in the Soviet Union,” 109 (quoting 1919 Communist Party Program).

<sup>41</sup> See Runciman, *Orthodox Churches and the Secular State*, 87; Boiter, “Law and Religion in the Soviet Union,” 111. Despite the Communist Party’s anti-religious policy, two-thirds of the population in rural areas and one-third in cities and towns continued to openly hold their beliefs. Ibid.

<sup>42</sup> See Makcim Shevchenko, “Esli nazvalsya khristianinom, to dolzhen byt pochti svyatym,” *NG-Religii*, February 18, 1998, Tatiana Goricheva, *Talking About God is Dangerous: the Diary of a Russian Dissident* (1987), 40-61. This wave of repression ended when Khrushchev was removed from power in 1964, but the Russian Orthodox Church was not permitted to regain its losses. During this period, the

a dissident movement developed within the Russian Orthodox Church (unsupported by the hierarchy) seeking recognition of the right to freedom of religion and protesting interference by the state in the Church's internal affairs.<sup>43</sup>

While all religious communities were persecuted and suppressed during the Soviet period, some were treated better than others and all were insulated from both outside assistance and competition.<sup>44</sup> Certain religious communities, such as the Russian Orthodox Church, Islam, Judaism, Buddhism, and some Protestants, were allowed to exist openly and conduct limited activities, as long as they submitted to strict state control. Severe repression of unauthorized religious communities continued against some Baptist communities, Pentecostals, Seventh-day Adventists, as well as

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Patriarch, his closest circle of advisors, the representatives of local church councils, and even monks were all approved by the Communist Party and the KGB, and many senior officials in the Church were KGB informers or operatives themselves. See Father Gleb Yakunin, "The Present State of the Orthodox Church and the Prospects for Religious Revival in Russia," in S. Pushkarev, V. Rusak, and G. Yakunin, eds., *Christianity and Government in Russia and the Soviet Union: Reflections on the Millenium* (1989), 107-45, 107-25.

<sup>43</sup> See Paul Valliere, "Russian Orthodoxy and Human Rights," in Irene Bloom, J. Paul Martin, and Wayne L. Proudfoot, eds., *Religious Diversity and Human Rights* (1996), 278-312, 287-92. See also "Appeal By Two Orthodox Priests, Moscow, December 15, 1965," *Religion in Communist Dominated Lands* 5 (May 15, 1966): 74-82; "An Open Letter to His Holiness Patriarch Alexei, Moscow, November 21, 1965," *Religion in Communist Dominated Lands* 5 (June 15, 1966): 90-105.

<sup>44</sup> The following figures are based on a reconstruction of statistical evidence from 1970 on the number of religious believers in the Soviet Union:

Russian Orthodox	30-50 million
Muslims	20-35 million
Roman Catholics	3.5-5 million (2.8 million in the Baltics)
Jews	2.15 million
Lutherans	1.5-2 million (850,000 in the Baltics)
Armenian Apostolic Church	1-2 million
Baptists and Seventh-day Adventists	550,000
Buddhists	200,000 - 600,000
Methodists	under 100,000

See Franz Pamminer, *Religionsgemeinschaften und moderner, säkularer Rechtsstaat* (1995), 21.

those groups that had split from the Russian Orthodox Church. As a consequence, these groups met and worshipped in secret.<sup>45</sup> Officials banned the Jehovah's Witnesses and the Ukrainian Catholic Uniate Church.

*Glasnost and perestroika.* The period of *glasnost* and *perestroika* brought a significant change in official attitudes toward religion in general and the Russian Orthodox Church. The government largely abandoned its atheist ideology, and the state became increasingly supportive of religious activity.<sup>46</sup> In 1988, the government sponsored a celebration of the 1,000th anniversary of the introduction of Christianity in Russia. Also by this time, the Orthodox Church was allowed to engage in social and educational activities, missionary work, and religious publishing. Muslim religious activity continued to be controlled and contained by the state until 1989, when mosques reopened, and Muslims published sacred texts and other religious literature, and established educational institutions.<sup>47</sup> After 1989, Islam became more influential in political affairs in regions where Muslims made up the majority of the population.<sup>48</sup>

*Russian religious policy since 1990.* In late 1990, both the USSR and the Russian Soviet Federative Socialist Republic adopted laws governing freedom of religion and religious organizations.<sup>49</sup> These laws broke sharply with past Soviet policy

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<sup>45</sup> See "Persecution in the Soviet Union," (Derwinski Statement).

<sup>46</sup> See Vsevolod Chaplin, "The Church and Politics in Contemporary Russia," in Bourdeaux, ed., *The Politics of Religion in Russia*, 95-112, 97. The Russian Orthodox Church at this time exerted more independence from the state. Ibid., 104-08. By the early 1990's, "there [was] no subject, it sometimes seem[ed], on which the media [did] not seek an opinion from the clergy, and the Russian government constantly tri[ed] to gain legitimacy or add to its stature by invoking a blessing from the Russian Orthodox hierarchy on formal occasions." Michael Bourdeaux, "Religion and the Collapse of the Soviet System," in Keith Armes, ed., *Religious Life in Russia*, (1995) 21-31, 21.

<sup>47</sup> See Arzt, "Historical Heritage," 439-40.

<sup>48</sup> See Arzt, "Proselytizing and the Muslim *Umma*," 120-24.

<sup>49</sup> For English translations of the 1990 USSR Law on Freedom of Conscience and Religious Organizations, see "Law on Freedom of Conscience and Religion," *Journal of Church and State* 33 (1991), 192-201, and the 1990 RSFSR Law of Freedom of Religion (1990 RSFSR Law), see Igor Troyanovsky, ed., *Religion in the Soviet Republics* (1991) 31-37. The 1990 RSFSR Law became effective in the Russian

on religion by guaranteeing in broad terms the right to freedom of religion or belief, providing for the equality of treatment of different religions, and prohibiting “organs of state power” from exercising control over religious affairs (effectively prohibiting the reestablishment of the recently disbanded Council of Religious Affairs). Under the 1990 Russian Soviet Federative Socialist Republic “Law on Freedom of Worship” (1990 RSFSR Law), religious associations were required to inform the state of their existence, but did not have to undergo a substantive registration process.

By November 1992, proposals were being made to amend the 1990 RSFSR Law.<sup>50</sup> The primary impetus behind these proposals was the desire to restrict the activities of foreign missionaries and other unpopular religious groups. The activities of foreign religious groups in particular were criticized by the Moscow Patriarchate, as well as some indigenous Russian Catholic and Protestant groups and official Muslim leaders.<sup>51</sup> By 1993, the leaders of the Russian Orthodox Church had come to view foreign mission groups generally as engaged in an unfair competition for souls that fell under the care of the Orthodox Church and in activities that were dangerous to the Russian social order and its people.<sup>52</sup> Official representatives of the Russian Orthodox Church (and to some extent other “traditional” religious communities) participated in legal changes at both the federal and local levels to restrict the activities of foreign and unpopular religious groups.<sup>53</sup>

The Supreme Soviet adopted amendments to the 1990 Russian Law in both July and August 1993. On both occasions, President Yeltsin refused to sign the legislation, citing, among other reasons, conflicts between the amendments and the Russian

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Federation when the USSR was dissolved in January 1992.

<sup>50</sup> See W. Cole Durham, Jr. et al., “The Future of Religious Liberty in Russia: Report of the De Burght Conference on Pending Russian Legislation Restricting Religious Liberty,” *Emory International Law Review* 8 (1994): 1-66, 4.

<sup>51</sup> See John Witte Jr., “Introduction,” in Witte and Bourdeaux, *Proselytism and Orthodoxy in Russia*, 1-27, 6-9.

<sup>52</sup> *Ibid.*, 7-8.

<sup>53</sup> See Krasikov, “Church-State Relations in Russia,” 77-78; Lauren B. Homer and Lawrence A. Uzzell, “Federal and Provincial Religious Freedom Laws in Russia: A Struggle for and Against Federalism and the Rule of Law,” *Emory International Law Review* 12 (1999): 245-312, 263.

Constitution and Russia's international legal obligations.<sup>54</sup> In 1994, the Yeltsin government developed new proposals to amend the 1990 RSFSR Law.<sup>55</sup> The Duma passed legislation in June 1997, but Yeltsin again refused to sign for similar reasons as in 1993. The Duma approved a slightly revised version in September, 1997. Yeltsin signed this legislation, and the 1997 Religion Law became effective on October 1, 1997.

## **B. Laws Affecting the Right to Freedom of Religion and Belief**

### **1. The Russian Constitution and Federal Law**

*The 1993 Russian Constitution.* In 1993, the Russian Federation adopted, by popular vote, a constitution that included human rights provisions generally consistent with international standards.<sup>56</sup> The Constitution states – in its section on “Foundations of the Constitutional System:”

The Russian Federation is a secular state. No religion may be established as the state religion or a compulsory religion. Religious associations are separated from the state, and are equal before the law.<sup>57</sup>

The Constitution provides for the right to freedom of conscience and religion, which may be restricted only in limited circumstances.<sup>58</sup> The Constitution also provides

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<sup>54</sup> See Durham et al., “Religious Liberty in Russia,” 10-11.

<sup>55</sup> See Krasikov, “Church-State Relations in Russia,” 78-82.

<sup>56</sup> An English translation of the Constitution of the Russian Federation adopted in December 1993 (1993 Constitution) from BBC Summary of World Broadcasts, November 11, 1993, is available on Lexis, News Library, News Group File.

<sup>57</sup> 1993 Constitution, art. 14.

<sup>58</sup> Article 28 of the 1993 Constitution provides: “Each person is guaranteed freedom of conscience and freedom of religion, including the right to profess any religion individually or together with others or not to profess any, and freely to choose, hold and disseminate religious and other convictions and to act in accordance with them.” Article 55 provides that rights may be restricted only to the extent required “for the purpose of protecting the foundations of the constitutional system, morality and the health, rights and legitimate interests of other individuals, or of ensuring the country’s defense and the state’s security.”



for equality before the law, and equal rights and liberties regardless of religion or belief.<sup>59</sup>

The Constitution is preeminent in the Russian legal system, and laws adopted at all levels of government must not contradict its provisions.<sup>60</sup> In addition, federal laws falling within the competence of the federal government (which includes the regulation and protection of human rights) prevail over contradictory enactments at the regional and local levels.<sup>61</sup> With respect to international legal obligations, “[g]enerally recognized principles and norms of international law and the international treaties of the Russian Federation” form a part of Russian law, and if an international treaty stipulates rules other than those stipulated by law, the rules of the treaty shall apply.<sup>62</sup>

*The 1997 Religion Law.* The 1997 Religion Law creates a hierarchy of religious communities in Russia.<sup>63</sup> In general, newer, smaller, and foreign religious communities are not able to exercise fully their right to freedom of religion and are denied privileges granted to other religious communities. This hierarchical scheme is effectuated through

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<sup>59</sup> 1993 Constitution, art. 19.

<sup>60</sup> 1993 Constitution, art. 15(1). The Constitutional Court resolves conflicts between the Constitution, federal, and state laws. Individuals can bring complaints before it. 1993 Constitution, art. 125.

<sup>61</sup> 1993 Constitution, arts. 71, 72, 76. Article 2 provides that: “The individual and his rights and freedoms are the supreme value. Recognition, observance and protection of human and civil rights and freedoms is the obligation of the state.”

<sup>62</sup> 1993 Constitution, art. 15(4). Russia is a party to the International Covenant on Civil and Political Rights (1966) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950). Russia has also undertaken political obligations to abide by provisions of CSCE/OSCE documents (including the Helsinki Final Act (1975) and the Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Cooperation in Europe (1989) (CSCE Vienna Document)).

<sup>63</sup> For the Russian text of the 1997 Religion Law, see *Federalniy zakon*, “O svobode sovesti i religioznykh obydineniyakh,” *Rossiyskaya gazeta* 190, October 1, 1997 ([http:// www.stetson.edu/~psteeves/relnews/freedomofconscience.html](http://www.stetson.edu/~psteeves/relnews/freedomofconscience.html) accessed April 28, 2000). For an English translation of the 1997 Religion Law, see “Russian Federation Federal Law on Freedom of Conscience and on Religious Associations,” *Emory International Law Review* 12 (1998): 657-80.

a registration process that is at best, onerous, time-consuming, and expensive, and at worst, open to abuse through the application of imprecise and subjective criteria.

The 1997 Religion Law divides religious associations into different categories and assigns different rights, powers, and privileges to each. One category is termed “religious groups.”<sup>64</sup> Religious groups are permitted to carry out worship, ritual, and ceremonies and to teach their religion.<sup>65</sup> However, religious groups do not have a legal personality (and thus cannot own or rent property in their own name) and cannot exercise in their own name the rights and powers granted specifically to other categories of religious associations under the 1997 Religion Law.<sup>66</sup>

The other category of religious association created by the 1997 Religion Law is “religious organizations,” which is further subdivided into centralized and local religious organizations.<sup>67</sup>

A religious organization, unlike a religious group, possesses a wide range of rights, powers and privileges under the 1997 Religion Law. A religious organization can obtain a legal personality; request military service deferment for its clergy (Art. 3(4)); create educational institutions (Art. 5(3)); offer religious education in public schools (Art. 5(4)); attach itself to a representative body of a foreign religious

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<sup>64</sup> Religious groups are voluntary associations of citizens “formed for the goals of joint confession and dissemination of their faith.” 1997 Religion Law, art. 7(1).

<sup>65</sup> 1997 Religion Law, art. 7(3).

<sup>66</sup> 1997 Religion Law, art. 7(1). Individuals may act in their own name on behalf of the group and exercise certain powers that are otherwise not available to religious groups, such as property ownership or the production and distribution of religious materials. See W. Cole Durham, Jr. and Lauren B. Homer, “Russia’s 1997 Law on Freedom of Conscience and Religious Associations: An Analytical Appraisal,” *Emory International Law Review* 12 (1998): 101-246.

<sup>67</sup> A local religious organization consists of 10 or more participants who are at least 18 years of age and permanently reside in one locality. 1997 Religion Law, art. 8(3). A centralized religious organization consists of not less than three local religious organizations. 1997 Religion Law, art. 8(4).

organization (Art. 13(5));<sup>68</sup> govern itself according to its own internal regulations (Art. 15(1)); carry out religious services in various public institutions (such hospitals, children's homes and prisons) (Art. 16(3)); produce, import and distribute religious materials (Art. 17(1)); carry out charitable activities (Art. 18(1)); establish institutions of professional religious education (Art. 19); maintain international links and contacts, including the right to invite foreign citizens for professional purposes (Art. 20); and own and receive donations of property, both in Russia and abroad (Art. 21).<sup>69</sup> This body of rights and privileges includes both some of the basic components of the freedom to manifest religion or belief, in community with others, as articulated in international human rights standards, as well as privileges that are not required under those standards.<sup>70</sup> To the extent that under the 1997 Religion Law religious groups can not exercise all of the rights and privileges granted to religious organizations, two problems are implicated: (1) interference with the right to freedom of religion (with respect to the basic components of religious freedom), and (2) discrimination on the basis of religion (with respect to privileges).<sup>71</sup>

A religious community must meet certain restrictive criteria in order to be

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<sup>68</sup> A foreign religious organization may open a representative body in Russia, but such an entity may not engage in religious activities and does not acquire the status of a religious association (either a religious group or a religious organization) under the 1997 Religion Law. 1997 Religion Law, art. 13(2).

<sup>69</sup> As part of the final compromise that led to the adoption of the law, the 1997 Religion Law creates a third category of religious organization. This category comprises associations that otherwise meet the criteria of a religious organization, but can not provide proof of its existence 15 years prior to their application for registration. Such an organization is granted some, but not all, of the rights, powers, or privileges otherwise available to a registered religious organization. 1997 Religion Law, art. 27(3). This provision of the 1997 Religion Law was challenged in the Russian Constitutional Court in the case discussed below.

<sup>70</sup> See UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, art. 6; CSCE Vienna Document, principle 16; Human Rights Committee, General Comment No. 22(48) (Article 18), CCPR/C/21/Rev.1/Add.4 (1993) ¶ 4.

<sup>71</sup> For an evaluation of the 1997 Religion Law under the human rights norms of the 1993 Russian Constitution and international law, see T. Jeremy Gunn, "Caesar's Sword: The 1997 Law of the Russian Federation on the Freedom of Conscience and Religious Associations," *Emory International Law Review* 12 (1998): 43-99.

registered as a religious organization under the 1997 Religion Law. Pursuant to the law's most controversial and potentially discriminatory provisions, in order to register as a local religious organization, the applicant must "have confirmation from the organs of the local government that it has existed on the given territory for no less than fifteen years, or confirmation from a centralized religious organization of the same creed that it forms part of its structure."<sup>72</sup> There are a number of additional criteria and technical requirements specified in the 1997 Religion Law for recognition as a religious organization. Some of these are vague, including the requirements that (a) the goals and activities of the religious organization not violate the law, (b) the organization must be "religious" and (c) the aims and activities of the organization cannot be "linked with the infringement of the Constitution of the Russian Federation and of current laws."<sup>73</sup> Thus, the status of religious organization is available only to an intentionally restricted group of religious institutions, and the decision to grant that status is subject to manipulation of vague and subjective criteria.

In order to be recognized as a religious organization, an application for registration must be made to the federal justice authorities (in the case of a centralized religious organization consisting of local organizations from more than one region) or to the regional justice authorities (in the case of a local religious organization or a centralized religious organization consisting of local organizations from only one region).<sup>74</sup>

Religious organizations established before the 1997 Religion Law became effective, and registered under the 1990 RSFSR Law, must re-register.<sup>75</sup> Re-registration of these organizations was to be completed by December 31, 1999, and religious organizations that were not re-registered by the deadline were subject to liquidation by

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<sup>72</sup> 1997 Religion Law, art. 9(1).

<sup>73</sup> 1997 Religion Law, arts. 6(4), 12(1).

<sup>74</sup> Religious organizations are required to inform the registering organ of their activities on an annual basis. 1997 Religion Law, art. 8(9). A religious group need not register in order to conduct its activities, unless it intends to seek the status of a religious organization following the 15-year waiting period. 1997 Religion Law, art. 7(2).

<sup>75</sup> 1997 Religion Law, art. 27(3).

court order.<sup>76</sup> In March 2000, the 1997 Religion Law was amended to extend the deadline for re-registration until December 31, 2000. The amending legislation also provides, ominously, that groups failing to achieve re-registration must be liquidated.<sup>77</sup> The analogous provision in the pre-amendment law stated that such groups “may be liquidated.”<sup>78</sup>

A religious organization can also be liquidated – or its activities banned – by court order on a number of broad grounds other than the failure to register, including “undermining social order,” refusal on religious grounds to accept necessary medical care, forcing followers to surrender property, inciting citizens to refuse to fulfill their civic obligations, and “systematic activities by a religious organization which contradict the goals for which it was created.”<sup>79</sup> Some of these liquidation grounds appear to be targeted at specific religious communities.<sup>80</sup>

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<sup>76</sup> 1997 Religion Law, art. 27(4).

<sup>77</sup> “O vnesenii izmeneniy v punkt 4 statyi 27 Federalnovo zakona ‘O svobode sovesti i o religioznykh obyedineniyakh’ ot 26 marta 2000 g” N 45-F3, *Rossiyskaya gazeta*, ([http://www.rg.ru/official/doc/federal\\_zak\\_/45\\_fz.htm](http://www.rg.ru/official/doc/federal_zak_/45_fz.htm) accessed April 28, 2000). See Tatyana Titova, “Organizations ‘Must Be Liquidated’ if They Fail to Meet New Reregistration Deadline,” *Keston News Service*, March 30, 2000; “On Introduction of Changes to Point 4, Article 27 of Federal Law,” *Rossiyskaia gazeta*, March 30, 2000 (<http://www.stetson.edu/~psteeves/relnews/0003b.html> accessed April 28, 2000).

<sup>78</sup> 1997 Religion Law, art. 27(4).

<sup>79</sup> 1997 Religion Law, arts. 14(1), 14(2), 14(5).

<sup>80</sup> Federal authorities issued three sets of regulations under the 1997 Religion Law in the first half of 1998, but these regulations did not clarify the vagueness or ambiguities in many of the law’s key provisions. See *1999 Religion Reports*, “Russia,” 296.

## 2. Implementation of the 1997 Religion Law

The religious freedom problems with the 1997 Religion Law are primarily related to the requirement of re-registration for those religious institutions that were legally operating with full and equal rights under the previous 1990 legislation on religious associations. Institutions that are not re-registered by the authorities by December 31, 2000 must be liquidated. According to Ministry of Justice figures, as of the end of December 1999, only half of the 16,850 religious organizations registered under the 1990 RSFSR Law had completed re-registration.<sup>81</sup> The majority of these are Muslim organizations and those affiliated with the Russian Orthodox Church.<sup>82</sup> In addition, only 40 percent of the total number of centralized religious organizations requiring re-registration at the federal level were registered before December 31, 1999.<sup>83</sup> In addition, one observer estimates that thousands of Russian religious organizations refuse on principle to register with the state, thereby relegating them to second-class, “religious group” status.<sup>84</sup> With so many religious organizations not yet registered, there is a danger that many will be unable to do so.

Because the registration process is both more restrictive and more open to abuse by the registering authorities than under the previous legislation, there is also the danger that the registration procedure will prevent numerous religious communities from fully exercising their right to freedom of religion. Thus, perhaps the most important measure of religious freedom in Russia over the next year will be the extent to which government officials make good faith efforts to register religious communities and the consequences for those groups that have been unable or unwilling to register.

This section of the memorandum discusses the progress of re-registration under

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<sup>81</sup> See Aleksei Markevich, “Ministry of Justice Guarantees Unregistered Religious Organizations No Restrictions,” January 3, 2000 (<http://www.febs.org/cis/news/news.htm> accessed 4/28/00).

<sup>82</sup> See Tatyana Titova, “Russia Again on the Way to Extending Re-registration Deadline?” *Keston News Service*, February 24, 2000.

<sup>83</sup> *1999 Country Reports*, “Russia.”

<sup>84</sup> Homer and Uzzell, “Provincial Religious Freedom Laws,” 289.

the 1997 Religion Law and the difficulties that religious communities have encountered.<sup>85</sup> Religious communities other than the Russian Orthodox Church have experienced the lion's share of the difficulties. On the negative side, local officials refused or denied registration to some religious communities for either no apparent reason or because of apparent animus toward the groups in question. Moreover, some regions initiated liquidation proceedings for religious organizations for failure to re-register before December 31, 1999, the initial deadline, despite the admonition of the federal justice authorities not to do so. Also, local officials brought liquidation proceedings against unpopular religious organizations because of their alleged "harmful" activities.

On the positive side, the majority of groups seeking re-registration have not encountered difficulties. The State Department reported that as of the end of 1999, "no religious organization has ceased operations as a result of the law."<sup>86</sup> Much of the feared negative impact of the 1997 Religion Law appears, so far, to have been avoided by actions of the Russian federal authorities (who have attempted to interpret and implement the restrictive features of the law in a flexible and liberal manner) and by a 1999 decision of the Russian Constitutional Court.

*Registration refusals or denials.* A number of groups have not been able to register as religious organizations because of the inability to establish that they were in existence for fifteen years prior to 1997. Parishes of the True Orthodox Church, which broke off from the state-controlled Russian Orthodox Church before 1982, have been denied registration in Suzdal and Voronezh for this reason even though they were

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<sup>85</sup> It is difficult to draw a complete picture of the implementation of the 1997 Religion Law (and relevant regional and local laws) because much of the implementation takes place at the local level, and reliable information regarding a number of regions, as well as certain religious groups, is not available. Much of what is known outside of Russia regarding the conditions of religious freedom in Russia is the result of the efforts of Keston Institute and Dr. Paul D. Steeves of the Department of History of Stetson University. They monitor events in Russia, in the Russian language press, and act as conduits for information in English from affected groups and individuals. As far as the international monitoring of religious freedom in Russia is concerned, as of February 2000, Russia had not responded to the request of the UN Special Rapporteur on Religious Intolerance to visit the country. See UN Special Rapporteur on Religious Intolerance, *Civil and Political Rights*, February 15, 2000, ¶ 115.

<sup>86</sup> 1999 Country Reports, "Russia."

registered under the 1990 RSFSR Law.<sup>87</sup> True Orthodox Church believers operated in secret during the Soviet period because their existence was not recognized by the state. Likewise, it is difficult for a number of religious groups – including Pentecostals, Baptists, Jehovah’s Witnesses, Seventh-day Adventists, Christian Scientists and other groups that broke away from the official Russian Orthodox Church during the Soviet period – to prove their existence 15 years prior to 1997 because of the secrecy under which they were forced to operate during the Soviet period.

Local officials also refused to register religious communities for no apparent reason or because of local animosity toward the group.<sup>88</sup> Local officials in Belgorod refused to register the region’s Catholic parish. The area’s Orthodox bishop publicly stated that the parish should not exist and that “there is no room here for non-traditional religions” in Belgorod.<sup>89</sup> These statements were echoed by local authorities.<sup>90</sup> Similarly, Jehovah’s Witnesses in Moscow were denied registration three times without explanation, even though their national organization was registered as a centralized organization in April 1999.<sup>91</sup>

The State Department reported a number of additional cases where regional authorities have (or are alleged to have) failed to register or re-register religious organizations.<sup>92</sup> These cases involve non-Orthodox Christian churches such as the New

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<sup>87</sup> See Roman Lunkin, “Russia: Orthodox Against Orthodox in Voronezh,” *Keston News Service*, March 3, 2000; Michael R. Gordon “Chafing Faith in Russia’s Onion Dome,” *New York Times*, October 12, 1997.

<sup>88</sup> According to the State Department, some religious groups have been able to overturn denials of registration on these grounds by appeal to the courts. See *1999 Religion Reports*, “Russia,” 297.

<sup>89</sup> See “Catholics Not Welcome in Russian Region,” *Newsroom* (March 3, 2000) ([http://www.prcenter.newmail.ru/3\\_mar\\_catholics\\_not\\_welcome.htm](http://www.prcenter.newmail.ru/3_mar_catholics_not_welcome.htm) accessed 3/30/00); Roman Lunkin, “Russia: State Officials and Orthodox Oppose Catholics in Belgorod,” *Keston News Service*, March 3, 2000.

<sup>90</sup> “Catholics Not Welcome in Russian Region,” *Newsroom* .

<sup>91</sup> *1999 Religion Reports*, “Russia,” 297. In April 1999, the Russian national office of Jehovah’s Witnesses received re-registration of the federal level. *Ibid*.

<sup>92</sup> *1999 Religion Reports*, “Russia,” 298.



Generation Church, the United Church, a Mennonite congregation, Pentecostals, Methodists and other independent Protestant groups. Regional officials in Chelyabinsk have rejected registration applications of organizations of Baptists, Adventists, Pentecostals and the Church of Jesus Christ of Latter-Day Saints.<sup>93</sup>

The registration process can be onerous, time-consuming and expensive, especially for small, local groups without significant resources. Moreover, bureaucratic difficulties have prevented or delayed registration of some religious organizations.<sup>94</sup> Local justice ministries often lack the necessary staff and equipment to review and process applications in a timely manner.<sup>95</sup> Local authorities did not receive timely regulatory guidance from the federal authorities. In some regions, local officials do not inform religious groups of the re-registration requirement or the appropriate procedures.<sup>96</sup>

Orthodox and Catholic parishes in Samara are encountering registration problems due to internal church rules governing the ownership and disposition of property that conflict with Russian law. According to Orthodox Church regulations, all parish property belongs to three owners: the parish, the diocese and the Moscow Patriarchate. If a parish is liquidated, its property goes to the local diocese and, if the diocese is liquidated, the property goes to the Moscow Patriarchate. Regulations of a similar type govern Catholic Church property. Authorities in Samara have demanded that, in order to re-register, a religious organization's property must be owned by the members of the parish, not by a bishop (who, in the case of the Catholic Church, is a foreign national), and, if a parish is liquidated, the disposition of the property is to be

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<sup>93</sup> Ibid.

<sup>94</sup> See, e.g., Geraldine Fagan, "Moscow's Anglican Parish Narrowly Avoids Liquidation," *Keston News Service*, February 28, 2000.

<sup>95</sup> See *1999 Religion Report*, "Russia," 296. According to Keston Institute, many registration applications are rejected because they are incomplete or poorly drafted. See *ibid.*

<sup>96</sup> In the Kaluga region, for example, the pastor of one church now subject to liquidation proceedings for failure to re-register simply did not know that it was necessary to re-register his parish. See Tatyana Titova, "Russia Again on the Way to Extending Re-registration deadline," *Keston News Service*, 24 February, 2000.

decided by a general meeting of parishioners or by a court of law.<sup>97</sup> These demands require changes to the governing documents of the organization, and can upset the balance of authority and interfere with the doctrinally-based internal regulations of religious communities organized in a hierarchical structure.<sup>98</sup>

*Liquidation for failure to re-register.* In general, regional authorities did not move to liquidate religious organizations that failed to re-register before the December 31, 1999 deadline.<sup>99</sup> However, there are exceptions. Regional authorities in Voronezh initiated liquidation proceedings against 13 non-registered religious organizations in late February 2000 based on the expiration of the deadline for registration. The 13 groups include the Union of Evangelical Christians-Baptists, an Evangelical Lutheran church, a Jewish community and several Pentecostal groups.<sup>100</sup> At least one group, a local Pentecostal congregation, has reported that the Voronezh court has ordered its liquidation.<sup>101</sup> Local officials explained that they were unaware of the Duma's decision in February to extend the deadline, and that they were acting in conformity with the 1997 Religion Law.<sup>102</sup> There are reportedly a number of Orthodox organizations in the Voronezh region that failed to re-register but are not subject to liquidation

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<sup>97</sup> See Tatyana Titova, "Registration in Samara Region: Civic Code Versus Canon Law," *Keston News Service*, November 17, 1999.

<sup>98</sup> See Valliere, "Russian Orthodoxy and Human Rights," 302.

<sup>99</sup> A federal deputy minister of justice announced on December 31, 1999 that the activities of unregistered religious organizations will not be affected by the expiration of the deadline. See Aleksei Markevich, "Ministry of Justice Guarantees Unregistered Religious Organizations No Restrictions." This official also indicated that regional justice officials had received letters from the federal ministry of justice requesting that liquidation proceedings not be initiated on account of the failure to re-register.

<sup>100</sup> See "Voronezh Courts Move to Liquidate Thirteen Religious Organizations," *Keston News Service*, February 21, 1999.

<sup>101</sup> See Geraldine Fagan and Mikhail Zherebyatev, "Russia: First Voronezh Religious Group Liquidated – Dozen More to Follow?," *Keston News Service*, March 6, 2000.

<sup>102</sup> See Mikhail Zherebyatev, "Russia: Voronezh Duma to Move for Harsh New Federal Law on Religion?," *Keston News Service*, March 6, 2000.

proceedings.<sup>103</sup> Local officials also launched liquidation proceedings against Baptist organizations in Kaluga and a Charismatic Church in Cheboksary.<sup>104</sup>

*Other liquidation proceedings.* Local officials have also initiated judicial proceedings to liquidate unpopular religious organizations on grounds other than the failure to re-register. These actions appear to have been instigated by parents of members of these organizations and “anti-cult” activists.<sup>105</sup> In a celebrated case, a municipal procurator in Moscow initiated liquidation proceedings against the local Jehovah’s Witnesses organization “for its alleged anti-social, anti-family character.”<sup>106</sup> The trial proceedings were suspended in March 1999, and a panel of “experts” was appointed by the court to review the case.<sup>107</sup> During the continuation of the proceedings, the Jehovah’s Witnesses in Moscow have reported difficulties in renting space and obtaining permits to build or renovate their own meeting places.<sup>108</sup>

Local officials in Magadan unsuccessfully attempted to liquidate the Word of Life Pentecostal Church on the basis that it engaged in “cult-like” manipulation of its members.<sup>109</sup> The local court dismissed the case on the basis of insufficient evidence.

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<sup>103</sup> See Geraldine Fagan, “Russia: First Voronezh Group Liquidated – Dozen More to Follow?,” *Keston News Service*, March 6, 2000; “Authorities in Central Russia Move to Eliminate Minority Religious Groups,” *Newsroom*, February 21, 2000.

<sup>104</sup> Tatyana Titova, “Russia Again on the Way to Extending Re-registration Deadline?,” *Keston News Service*, February 24, 2000.

<sup>105</sup> UN Special Rapporteur on Religious Intolerance, *Civil and Political Rights, Including Religious Intolerance*, E/CN.4/2000/65, February 15, 2000, ¶¶ 35-36; *1999 Religion Reports*, “Russia,” 299. Private lawsuits for damages have also been initiated against groups such as the Jehovah’s Witnesses. See *1999 Country Reports*, “Russia.”

<sup>106</sup> See Samarina, “Jehovah’s Witnesses on Trial,” ; *1999 Religion Report*, “Russia,” 299.

<sup>107</sup> See *1999 Religion Reports*, “Russia,” 299. The website of the Jehovah’s Witnesses in Russia contains detailed documentation in English on these proceedings (<http://www.jw-russia.org>).

<sup>108</sup> Public Affairs Office, Jehovah’s Witnesses, “Delayed Justice: Suspension of First Trial Testing Russia’s Religion Law Reaches One-year Anniversary,” March 10, 2000 (<http://www.stetson.edu/~psteeves/relnews/0003a.html> accessed 3/10/00).

<sup>109</sup> See *1999 Religion Report*, “Russia,” 297.

Other regional authorities also used “experts” to examine the beliefs, doctrines, or activities of religious communities in both liquidation proceedings and consideration of re-registration applications. Officials in Novgorod, Orel, Lipetsk, and Ryazan sought “expert” opinions on the Jehovah’s Witnesses.<sup>110</sup> In February of this year, local authorities in Kirov employed “expert” psychiatric testimony and illegal surveillance in a proceeding to liquidate a local Pentecostal church. The court, however, denied the request to liquidate and reprimanded local officials for blatant violations of constitutionally-protected rights.<sup>111</sup> In March 1999, an “expert council” in Primorsky declared that the Church of Christ was “destructive.”<sup>112</sup>

*Membership in a centralized organization or proof of 15 years existence.* The most serious cause for concern among religious communities seeking to operate in Russia under the 1997 Religion Law is the requirement that a religious organization must be a member of a centralized religious organization or prove that it has existed for at least 15 years in the locality of registration. According to one Russian official, possibly 12,000 religious organizations (out of approximately 17,000 total) registered after 1990 may not be able to meet this requirement.<sup>113</sup>

However, federal justice authorities and the Russian Constitutional Court have interpreted and applied this requirement in such a way as to permit many groups to register as religious organizations. Soon after the adoption of the 1997 Religion Law, federal justice authorities stated that the 15 year requirement did not apply to a local

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<sup>110</sup> See Public Affairs Office, Jehovah’s Witnesses, “Delayed Justice.”

<sup>111</sup> See Roman Lunkin, “Kirov Charismatics Win Legal Proceedings Against Justice Administration,” *Keston News Service*, February 7, 2000.

<sup>112</sup> *1999 Religion Reports*, “Russia,” 298.

<sup>113</sup> Maxim Shevchenko, “Yesterday’s Solomonic Decision,” *Nezavisimaia gazeta*, November 24, 1999 (<http://www.stetson.edu/~psteeves/relnews/9911a.html> accessed April 26, 2000). This figure includes 6,000 Russian Orthodox, 1500 Muslim, 140 Buddhist and 70 Jewish organizations.

religious organization that was a member of a centralized religious organization.<sup>114</sup> In other words, religious groups that could not prove a 15 year existence in a particular location could nevertheless register as a local religious organization as long as they were a member of a centralized religious organization. In this way, many local religious groups – particularly Baptist, Pentecostal, and Charismatic churches – who would not otherwise be eligible for registration were able to do so by affiliating themselves with a centralized organization.

Some groups, however, cannot, or will not, avail themselves of this option. For example, Jesuit groups have not been able to register as religious organizations because, as a matter of internal governance, they will not affiliate themselves with Catholic centralized religious organizations under the control of Catholic bishops.<sup>115</sup> Other groups that organize themselves along congregational, rather than hierarchical, lines are also faced with the choice of violating their principles of internal governance or foregoing registration (and subjecting themselves to possible liquidation).<sup>116</sup> Even in the case where a local group has chosen to affiliate with a centralized group in order to register, problems may arise if disputes develop between members of a centralized group and its “adopted” local religious organization.

*The 1999 Russian Constitutional Court ruling.* A November 1999 ruling by the Russian Constitutional Court may further ameliorate the centralized organization/15 year requirement of the 1997 Religion Law. The Constitutional Court determined that a religious organization that operated legally under the 1990 RSFSR Law need not prove membership in a centralized organization or a 15 year existence in order to receive the full advantages of registration as a religious organization under the 1997 Religion Law.

The constitutional challenge to the 1997 Religion Law was brought by two local religious institutions, the religious society of the Jehovah’s Witnesses in the city of Yaroslavl and the Christian Church of Glorification in Khakassia. Both groups registered pursuant to the 1990 RSFSR Law and re-registered under the 1997 Religion Law as local religious organizations that were members of a registered centralized religious organization. They did not, however, establish that they were in existence 15 years prior to their application for registration. Under the 1997 Religion Law, such groups cannot exercise certain rights and powers available to religious organizations generally. These include the rights to request exemption of clergy from military

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<sup>114</sup> See Durham and Homer, “Russia’s 1997 Law,” 201.

<sup>115</sup> *1999 Religion Reports*, “Russia”, 297.

<sup>116</sup> *Ibid.*, 296.

conscription; establish educational institutions; maintain representations of a foreign religious organization and invite foreign citizens for the purpose of conducting religious activities; conduct religious activities in health care institutions, children's or nursing homes, or penal institutions; manufacture, purchase, or distribute religious materials; or establish mass media.<sup>117</sup> Both organizations were engaging in some of these prohibited activities and brought the court challenge after being requested by local law enforcement authorities to cease such violations of the 1997 Religion Law.

The Constitutional Court confirmed that local religious institutions that are members of a registered centralized religious organization are not subject to the 15 year requirement. In addition, the Court held that religious organizations registered prior to the 1997 Religion Law are not required to satisfy the 15 year requirement in order to exercise the rights of a religious organization under the 1997 Religion Law. Noting that under the 1990 RSFSR Law, all religious organizations enjoyed legal status and could exercise legal rights on an equal basis, the Constitutional Court decided:

Under such circumstances the legislature cannot deprive a certain portion of religious organizations that already are established and possess full legal competence of the possibility of enjoying rights that already belong to them simply on the basis that they do not have the confirmation of a fifteen-year existence. Relative to previously created religious organizations this would be incompatible with the principal of equality that is specified [in the Russian Constitution] and it would be an impermissible restriction of freedom of religious profession as well as freedom of the establishment and activity of public associations.<sup>118</sup>

The Constitutional Court did not address the question of the constitutionality of the 15 year requirement as applied to religious institutions that had not previously been organized under the 1990 RSFSR Law, and those religious associations are still subject to the 15 year requirement.<sup>119</sup> However, the implementation of the 1997 Religion Law

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<sup>117</sup> See 1997 Religion Law, art. 27(3).

<sup>118</sup> Decision of the Constitutional Court of the Russian Federation Regarding the Appeals of the Religious Society of Jehovah's Witnesses of the city of Yaroslavl and the Religious Association "Christian Church of Glorification," November 23, 1999 (<http://www.jw-russia.org/eng/other/99nov23ConstCourt.htm> accessed 4/27/00).

<sup>119</sup> See *ibid.*

in conformity with the Constitutional Court's decision will help re-establish the principle that all religious institutions exercise legal rights and privileges on an equal basis under Russian law.

### 3. Regional and Local Laws

*Restrictive regional and local laws.* The 1997 Religion Law provides that any legal acts at the regional and local levels concerning the rights to freedom of conscience and religious belief and the activities of religious associations must be consistent with federal law.<sup>120</sup> Despite this requirement, numerous regions and localities enacted and enforced decrees and laws governing the religious activities of individuals and institutions.<sup>121</sup> These enactments in some cases create confusing regulatory schemes of overlapping, and sometimes contradictory, requirements. Furthermore, a number of these laws are more restrictive and discriminatory than the 1997 Religion Law and violate the provisions of the Russian Constitution. According to one leading observer, "[t]he enactment of regional laws accelerated in 1996, and they became increasingly restrictive, discriminatory, and violative of federal law."<sup>122</sup>

The State Department reports that 30 of the 89 constituent regions of the Russian Federation have laws or decrees that restrict the activities of religious institutions in violation of the Russian Constitution.<sup>123</sup> The Russian federal authorities reportedly informed regional officials of this position.<sup>124</sup> Apparently, federal authorities have taken no further steps to bring these regional and local laws into compliance with federal law and the Russian Constitution or to discipline local officials acting pursuant to these laws.<sup>125</sup>

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<sup>120</sup> See 1997 Religion Law, art. 2(2).

<sup>121</sup> See Homer and Uzzell, "Provincial Religious Freedom Laws," 261.

<sup>122</sup> *Ibid.*, 262-63.

<sup>123</sup> See *1999 Religion Reports*, "Russia," 296; Homer and Uzzell, "Provincial Religious Freedom Laws," 262.

<sup>124</sup> *1999 Religion Reports*, "Russia," 296.

<sup>125</sup> *Ibid.* In one case from 1997, the Supreme Court of the Udmurt region determined that the Udmurt regional law on missionary activity created a special system of regulation of missionary activity that violated the rights of citizens to freedom of religion under the Russian Constitution and was preempted by federal law. See Homer and Uzzell, "Provincial Religious Freedom Laws," 300-08. For an English translation

Many of the difficulties encountered by religious groups in Russia are a result of the enforcement of these restrictive regional and local laws as they provide the mechanism, or in some cases the pretext, for local officials to restrict the activities of local religious groups.<sup>126</sup> Although each local law is different, they have a number of restrictive and potentially discriminatory features in common.

First, many of the regional laws require registration or accreditation at the local level of both the religious institution and individual religious workers, typically in addition to the registration requirements for institutions under the 1997 Religion Law.<sup>127</sup> The laws prohibit religious activities of unregistered or unaccredited groups and individuals. Second, many of the regional laws apply only to foreign institutions or individuals, although in some cases the definition of "foreign" encompasses Russian citizens or organizations from outside the region in question. In some cases, the restrictions in the law apply to some religious communities but not others. Typically, "traditional" religious communities are exempt. Third, many of the regional laws create bureaucracies charged with regulating and monitoring the activities of religious institutions, modeled on Soviet-era Councils of Religious Affairs.<sup>128</sup> Fourth, many of the regional laws prohibit the use of public facilities (such as schools, theaters and outlets of mass media) for religious activities. Finally, many of the regional laws permit investigations by "experts" into the acceptability of religious beliefs prior to registration.

*Enforcement of regional and local law.* The enforcement of local laws and decrees on religion is decidedly uneven. In a number of regions, local laws are used to

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of this decision, see *Emory International Law Review* 12 (1998): 715-38.

<sup>126</sup> See *1999 Religion Reports*, "Russia," 297; "Presidential Determination No. 98-23 of May 23, 1998," reprinted in *Federal Register* 63 (1998): 30365; Madeleine Albright, Secretary of State, "Determination Pursuant to Section 572 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999," April 15, 1999.

<sup>127</sup> See Homer and Uzzell, "Provincial Religious Freedom Laws," 275. English translations of a number of Russian regional laws are available at (<http://www.law.emory.edu/EILR/volumes/win98/wintoc.html> accessed 4/27/00).

<sup>128</sup> The 1997 Religion Law did not include a provision prohibiting the establishment of such state organs, as was included in the 1990 RSFSR Law.



interfere with the activities of foreign-based or unpopular religious groups, even in cases where those groups have been properly registered under the 1997 Religion Law. In other regions, restrictive and discriminatory local laws have not been enforced at all.<sup>129</sup> In still other regions, local enforcement practices are even worse than the already restrictive and discriminatory local laws. Thus, the law does not effectively guide the behavior of many religious groups and keep them from running afoul of the local authorities.

On the local level, the State Department reported approximately 25 cases of harassment of religious groups from the date of enactment of the 1997 Religion Law to May 1998 and another 30 cases between June 1998 and April 1999.<sup>130</sup> Minority religious groups have on occasion been unable to secure permits or rent suitable places for assembly and worship, produce and distribute religious publications, and conduct religious educational activities. The inability to rent suitable places of worship has particularly affected native Baptists and other Protestant groups that do not have church buildings. In many cases, these groups are dependent upon spaces owned by local governments, who have, in some areas, been influenced by local officials of the Russian Orthodox Church not to make space available to the disfavored groups. In addition, local believers and foreign missionaries have been harassed and threatened by security officials, and even expelled. The types of restriction or harassment outlined in this paragraph have been reported in Khakassiya, Yaroslavl, Novokuznetsk, and Chelyabinsk.<sup>131</sup>

#### **4. Disputes over the restitution of religious property**

The return and restitution of religious property confiscated by the state during

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<sup>129</sup> See Uzzell and Homer, "Provincial Religious Freedom Laws," 293-96 (discussing Kostroma and Sverdlovsk regions).

<sup>130</sup> See "Presidential Determination No. 98-23 of May 23, 1998," reprinted in *Federal Register* 63 (1998): 30365; Madeleine Albright, Secretary of State, "Determination Pursuant to Section 572 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999," April 15, 1999; Hon. Christopher H. Smith, "Administration Certification of Russia Regarding Religious Freedom," *Congressional Record* 145, no. 62 (May 3, 1999).

<sup>131</sup> See *1999 Religion Reports*, "Russia," 297-99.

Soviet rule has been a persistent problem in Russia over the past decade.<sup>132</sup> The return of religious property is governed by a 1993 presidential decree, although most cases fall under the jurisdiction of the regional authorities. Religious groups encounter bureaucratic difficulties in recovering their property, and, in some instances, become embroiled in disputes with other religious groups over the rightful ownership of property. In certain cases, the Roman Catholic Church failed to recover property, such as Sts. Peter and Paul churches in Moscow.<sup>133</sup> Old Believers encounter difficulties with property currently occupied or held by the Moscow Patriarchate.<sup>134</sup> In some cases it has been alleged that the Russian Orthodox Church has influenced local officials to refuse the registration of other religious associations in order to prevent the return of property occupied by the Orthodox Church.<sup>135</sup>

## 5. Other Legal Problems

A serious concern of religious communities in Russia dependent on foreign-trained clergy is a current practice regarding visas for foreign clergy.<sup>136</sup> While business visitors and journalists are granted one-year, multiple entry visas, clergy are restricted to 3-month visas, which can be renewed only by returning to one's country. Though this visa requirement applies to clergy of all religions, it has a disproportionate effect on the Roman Catholic Church because of its dependency on ordained clergy. Since there were no Catholic seminaries operating in Russia proper (there was one in Latvia) during the Soviet period, and the first Russian Catholic seminary graduated its first class in 1998, there is a dearth of Russian Catholic priests today. Moreover, seminary training

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<sup>132</sup> This is true throughout former Communist countries of Central and Eastern Europe, as well as states of the former Soviet Union.

<sup>133</sup> See, e.g., *1999 Religion Reports*, "Russia," 300; Ekaterina A. Smyslova, "Freedom of Religion in Russia 1998," *Helsinki Monitor* 9, no. 3 (1998): 62-70, 68-69.

<sup>134</sup> See Alexis Yurievich Riabtsev, "Authorities Have Taken Revolutionary Path," *NG - Religii*, May 20, 1998 (<http://www.stetson.edu/~psteeves/relnews/9805d.html> accessed 4/12/00); *Tserkovno-obshchestvenyi vestnik*, September 17, 1997 (<http://www.stetson.edu/~psteeves/relnews/council2808.html> accessed 4/29/00).

<sup>135</sup> See Roman Lunkin, "Russia: State Officials and Orthodox Oppose Catholics in Belgorod," *Keston News Service*, March 3, 2000; Michael R. Gordon, "Chafing Faith in Russia's Onion Dome," *New York Times*, October 12, 1997.

<sup>136</sup> See *1999 Religion Reports*, "Russia," 297.

for priests runs for approximately six years, which means that it will be a number of years before the Russian Church is able to supply sufficient numbers of priests for itself. This places a significant financial burden on the Church, and the right of Catholics to worship is interfered with by this bureaucratic obstacle.

### **C. Societal Attitudes**

The laws and political institutions of Russia operate, of course, in the context of larger societal attitudes. As in any country, societal prejudices affect not only popular attitudes towards religious minorities, but they also can affect the parliamentary, governmental, and judicial officials who are responsible for legislating, enforcing, and applying the law. Because religious freedom will take root in Russia only when the people and governments of Russia choose to protect and promote it, it is important to identify the attitudes and prejudices that might, directly or indirectly, impede religious freedom. This is a decidedly difficult task in a country as large and diverse as Russia, but certain attitudes can be identified.

This section of the memorandum discusses four such attitudes: 1) negative attitudes toward religious-ethnic minorities-- including Muslims, Jews and non-Orthodox Christians, 2) nationalism and the distrust of foreign or Western ideas, 3) special recognition and protection of the Russian Orthodox Church, and 4) suspicion of the law and human rights. In identifying these attitudes, it is important to remember that they are not shared by all Russians – indeed they may not even be shared by a majority. Nevertheless, they are sufficiently pervasive to have an adverse affect on religious minorities in Russia.

#### **1. Negative Attitudes Toward Religious-Ethnic Minorities**

##### ***a. Muslims***

Russian attitudes towards Muslims and relations between Muslims and the Russian Orthodox Church have ebbed and flowed with changing political, economic and demographic realities.<sup>137</sup> Since the dissolution of the Soviet Union, however, Muslims in Russia – particularly, but not exclusively, Chechens – have become the targets of increased hostility and intolerance in both official and popular circles. This

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<sup>137</sup> See Arzt, “Proselytizing and the Muslim *Umma*,” 112-18.

hostility has to a great extent crystalized around events in the North Caucasus.<sup>138</sup>

While the conflict in the Caucasus is primarily political and ethnic in nature, religion appears to play a role on both sides. Islam forms the basis of Caucasian identity, and it is a significant element of resistance to domination by Moscow.<sup>139</sup> Russian authorities, meanwhile, make rhetorical use of deep-seated and historic prejudices against Muslims to rally domestic support for the war, which in turn fuels anti-Muslim attitudes in Russia by making Islam and Muslims synonymous with terrorism and extremism. These actions appear to directly impact the religious freedom of those Muslims who operate independent of official Muslim institutions that date from the Soviet period.<sup>140</sup>

*The Chechen war and its implications.* The Caucasus mountains, which lie along the strategic corridor between the Caspian and the Black Seas, contain more than 30 ethnic and religious groups and historically posed formidable challenges for Russia.<sup>141</sup> Chechens forcefully resisted rule from Moscow under the czars, the Soviets and now democratic Russia, and as a result have lost nearly half their population.<sup>142</sup> In

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<sup>138</sup> In 1991, the newly-elected president of the Chechen Republic declared independence from the Russian Federation. President Yeltsin then declared a state of emergency in the region and sent troops to Grozny, the Chechen capital, only to withdraw them three days later. The first Russian military campaign began in earnest in late 1994.

<sup>139</sup> Some experts consider that Russia's handling of the crisis ensures that Islam will continue to be the language through which alienated groups in the Caucasus choose to articulate their disaffection, and predict that "the Chechen war will intensify the dynamic of separation [from Russia] by leading more groups – especially Muslims – to consider independence." Georgie Anne Geyer, "Russian Brutality in Chechnya Barely Noted in U.S.," *Chicago Tribune*, February 25, 2000.

<sup>140</sup> See Geraldine Fagan and Lawrence Uzzell, Keston Institute, "Church-State Relations in Russia: What's Next?" (statement submitted to roundtable discussion on religious freedom in Russia at the U.S. Department of State, April 13, 2000).

<sup>141</sup> For more on the history of Russia in the Caucasus, see Firuz Kazemzadeh, "Russian Penetration of the Caucasus," Taras Hunczak, ed. *Russian Imperialism: From Ivan the Great to the Revolution* (1974), 239-263.

<sup>142</sup> Possibly half of the Chechen population was killed during the incorporation of Chechnya into the Russian empire in the 19<sup>th</sup> century. The Bolsheviks did not

1996, Moscow and the breakaway republic signed a cease-fire agreement that ended their two-year war and established *de facto* Chechen independence. However, the independent Chechen authorities failed to consolidate control over the region and protect its inhabitants from waves of violence and lawlessness. In particular, the taking of hostages for ransom was widespread during this period. In February 1999, President Aslan Maskadov declared Islamic law to be in effect in the quasi-independent Chechen republic and replaced the republic's legislature with a 34 member Shura ("Consultative") Council.<sup>143</sup>

Conflict in Chechnya reignited in August 1999 following incursions by Chechen fighters into neighboring Daghestan and a spate of apartment bombings that killed nearly 300 people in Moscow and elsewhere and that the government and media blamed, apparently without evidence, on Chechens.<sup>144</sup>

Chechnya's second post-Soviet war has been costly for both sides. By April 2000, more than 2,100 Russian soldiers had been killed.<sup>145</sup> Although no reliable reports are yet available, it is believed that thousands of Chechens, many of them civilians, have been killed. Over 200,000 Chechen refugees have fled to neighboring regions.<sup>146</sup>

In its prosecution of the war, Russian troops allegedly committed widespread

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completely subdue Chechnya and neighboring Dagestan until 1936. See Arzt, "Proselytizing and the Muslim *Umma*," 113. During the Second World War, Stalin deported Chechens and Ingushes (numbering between 400,000 and 800,000) from the Caucasus, resulting in the deaths of a substantial portion of their populations. See *ibid.*, 114.

<sup>143</sup> 1999 *Religion Reports*, "Russia," 302.

<sup>144</sup> Conflict in the Caucasus has not been confined to Chechnya and Daghestan. Various ethnic and sectarian flashpoints exist throughout the region. In 1992, predominantly Orthodox North Ossetia and Muslim Ingushetia fought a brief but bloody war. During that war, most of the Ingush living in North Ossetia were expelled.

<sup>145</sup> See "OSCE Tours Chechnya, Russia Says No Truce," *Reuters*, April 14, 2000.

<sup>146</sup> UN High Commissioner for Human Rights, "Situation of Human Rights in Chechnya in the Russian Federation," April 5, 2000 (<http://www.unhchr.ch> accessed 4/12/00).

abuses of humanitarian and human rights law against civilians. Beginning in late November 1999, the Russians mounted a massive aerial and artillery bombardment on Grozny, the Chechen capital, leading to countless civilian casualties.<sup>147</sup> Just prior to this offensive, the Russian military issued a warning to Chechen civilians in Grozny to flee or face “elimination.” Leaflets dropped from Russian planes warned: “Those who remain will be viewed as terrorists and bandits and will be destroyed. . . . Everyone who does not leave the city will be destroyed.”<sup>148</sup>

In mid-December, Russian troops launched a ground offensive in Chechnya. The Chechen offensive, though popular in Russia, was roundly criticized by human rights organizations and many in the international community. The Russian military has been accused of gross violations of human rights of the civilian population, including mass killings, summary executions, rape, torture and pillage.<sup>149</sup>

Russia’s handling of the Chechen crisis threatens its place in the international community. On her visit to the war zone, Russian authorities denied UN High Commissioner for Human Rights Mary Robinson access to sites where abuses were alleged to have taken place and refugee camps.<sup>150</sup> Robinson and the UN Human Rights Commission called on Russia to establish an independent tribunal to investigate and

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<sup>147</sup> Amnesty International, “The Russian Federation: Chechen Republic, “Humanity is Indivisible.” November 1999 (Report-EUR 46/38/99) (<http://www.amnesty.org/ailib/aipub/1999/EUR/44603899.htm> accessed March 31, 2000). See also Human Rights Watch, “Russia/Chechnya, “Civilian Killings in Staropromyslovski District of Grozny,” February 2000 ([http://www.hrw.org/reports/2000/russia\\_chechnya](http://www.hrw.org/reports/2000/russia_chechnya) accessed March 31, 2000).

<sup>148</sup> Human Rights Watch, “Civilian Killings in Grozny.” According to Human Rights Watch, the ultimatum was subsequently dropped as a result of international pressure. Ibid.

<sup>149</sup> See UN High Commissioner for Human Rights, “Situation of Human Rights in Chechnya,” Amnesty International, “Russian Federation: Chechnya. For the Motherland,” December 1999 (EUR 46/46/99) (<http://www.amnesty.org/ailib/aipub/1999/EUR/44604699.htm> accessed March 31, 2000). See also Human Rights Watch, “Civilian Killings in Grozny.”

<sup>150</sup> See Daniel Williams, “UN Rights Chief Blocked from Chechen Sites; Russians Prevent Inspection of Areas of Suspected Atrocities,” *Washington Post*, April 4, 2000.

prosecute human rights and humanitarian violations.<sup>151</sup> The European Union urged president-elect Vladimir Putin to pursue a negotiated settlement to the conflict and stated that Russia's policy toward Chechnya would significantly influence its relations with the West.<sup>152</sup>

*Discrimination against Muslims.* Throughout the Chechen crisis, a hardening of public attitudes and official policy toward Muslims has resulted in instances of intolerance and discrimination. These attitudes are not new. During the period from 1991 to 1996, people from the Caucasus – especially Chechens – were subjected to harassment, abuse, and detention by security forces in Moscow, where a series of ordinances were adopted in 1993 to deport Caucasians and other non-ethnic Russians.<sup>153</sup> A 1995 opinion poll showed that 65 percent of all Muscovites surveyed supported official efforts to deport non-Russians from Moscow.<sup>154</sup>

Fear, distrust, and intolerance of Chechens and Muslims intensified against the backdrop of perceived lawlessness in Chechnya and the decision to adopt avowedly Islamic political and legal systems during the period of *de facto* independence. Official government statements are replete with references to Chechnya as an “outpost of international terrorism” or an “enclave of criminality,” while Chechen militants have been branded as “bandits” and “terrorists.” Some Russian officials seek to make “Islam” and “Muslim” synonymous with terrorism and extremism. The Russian Minister of Justice, for example, made the link: “We believe that the greatest threat [to Russia] comes from Islamic fundamentalism, namely Wahhabism. It is a special form of political extremism similar to terrorism.”<sup>155</sup> Officials use the label of “Wahhabism”

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<sup>151</sup> See UN Press Release, “High Commissioner for Human Rights Urges Russian Inquiry Commission,” April 4, 2000 (<http://www.unhchr.ch> accessed 4/29/00); UN Commission on Human Rights, Press Release, April 25, 2000 (<http://www.unhchr.ch> accessed 4/29/00).

<sup>152</sup> Associated Press, “EU, Russia Working on Relationship,” April 10, 2000.

<sup>153</sup> Arzt, “Proselytizing and the Muslim *Umma*,” 124-26; Human Rights Committee, *Consideration of Reports Submitted By States Parties Under Article 40 of the Covenant*, CCPR/C/79/Add.54, October 3, 1995, ¶ 20.

<sup>154</sup> Arzt, “Proselytizing and the Muslim *Umma*,” 124.

<sup>155</sup> Edward Walker, “Islam in Chechnya,” (unpublished paper delivered at Berkeley-Stanford conference entitled “Religion and Spirituality in Eastern Europe and the Former Soviet Union”) (on file with Commission staff).

to criticize a wide range of Muslims beyond only those groups that espouse extreme views. Muslim leaders, meanwhile, protest the way in which Russian politicians and media link “terrorism” with “fundamentalism,” or “Islamism.”<sup>156</sup>

Under the rubric of “anti-terrorist” measures, Russian law-enforcement authorities “launched what appeared to be a massive intimidation campaign mainly targeting Chechens and other people from the Caucasus.”<sup>157</sup> In September 1999, the Moscow city government adopted a measure permitting officials to detain or deport “unregistered” residents of Moscow, the vast majority of whom are displaced persons or other asylum seekers from the Caucasus. Moreover, Russian public opinion seems to strongly favor expulsion of ethnic Caucasians from Moscow.<sup>158</sup> According to Amnesty International, many of those detained are tortured and otherwise mistreated.<sup>159</sup>

At least one of Russia’s traditional Muslim religious leaders was targeted for harsh treatment. In November 1999, 20 Russian Federal Security Service (FSB) agents broke into the home of Supreme Mufti Shaykh Nafigulla Ashira, apparently in search of weapons and explosives.<sup>160</sup> Shaykh Nafigulla’s home was ransacked, and he and members of his family were detained and interrogated for three hours by FSB agents. The Shaykh spoke to a local reporter of the event’s ominous implications for Russian

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<sup>156</sup> “Peace between believers key to Russian prosperity – Mufti,” *Itar-Tass*, January 8, 2000.

<sup>157</sup> Amnesty International, “For the Motherland.”

<sup>158</sup> See *ibid.*

<sup>159</sup> *Ibid.* The Moscow police, according to this report, use the phrase: “The only good Chechen is a dead Chechen.”

<sup>160</sup> Aleksei Bichurin, “Strange Actions With Unclear Consequences,” *NG - Religii*, December 22, 1999 (<http://www.stetson.edu/~psteeves/relnews/0001a.html#04>). Shaykh Nafigulla is the spiritual leader of Muslims in the Asian part of Russia, and he and his counterpart in the European part, Shaykh Ravil Gainutdin, are co-chairs of the Russian Council of Muftis. Shaykh Nafigulla, Shaykh Gainutdin and other members of the Council of Muftis have disavowed Islamist and separatist movements in Chechnya and Daghestan. See “Putin meets chief mufti to discuss situation in Dagestan,” *Itar-Tass*, August 21, 1999.



Muslims:

This event gives practically unlimited right for the persecution of any Muslim. . . . As spiritual leader of Muslims, I always have felt a respectful attitude toward me. Now I feel completely disgraced. What will my Russian neighbors come to think if they tell them that they searched Sheikh Nafigulla's apartment for weapons and explosives? Today I am subjected to repression; tomorrow, someone else . . . will be dragged out of the mosque. There can be absolutely no guarantees.<sup>161</sup>

*Muslim religious freedom.* The rise in anti-Caucasian and anti-Muslim sentiment in Russia coincides with a religious reawakening among Muslims in Russia that has further aroused fear and suspicion.<sup>162</sup> An Islamic revival has taken hold among traditional followers of the many Sufi orders the predominate in the Caucasus, as well as through the newer "Wahhabi" and other Islamist trends that have appeared in the Muslim Caucasus and in Tatarstan in central Russia.<sup>163</sup>

A revival of avowedly Islamic interests has reportedly led to interference by regional governments with the internal affairs of Muslim religious associations, and close surveillance of religious activities conducted by associations that operate outside of government control.<sup>164</sup> According to observers from the Keston Institute:

The very term "Wahhabism" has become a tool for discrediting anyone of Muslim background who is out of favor with the government for any reasons, regardless of his actual doctrinal views or actual connections

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<sup>161</sup> Bichurin, "Strange Actions."

<sup>162</sup> See Vanora Bennett, "Fears Mounting as Islamic Fervor Spreads in Russia: Conflict, Republic's Stability at Issue," *Los Angeles Times*, November 2, 1999; Varzanova, "Confessions."

<sup>163</sup> Wahhabism is not a sect as such, but a literalist, puritanical and neo-traditionalist movement founded in the 17th century in the Arabian peninsula. Wahhabism is the official doctrine of Saudi Arabia and may have come to the Caucasus by pilgrims returning from Mecca. See Edward Walker, "Islam in Chechnya."

<sup>164</sup> See, e.g., Geoffrey York, "Islam in Tatarstan," *The Globe and Mail (Canada)*, May 5, 1998 (<http://www.stetson.edu/~psteeves/relnews/9805a.htm> accessed February 18, 1999).

with terrorist activities. It is likely that nonmainstream followers of Islam in Russia will continue to be special targets for restrictions in their religious freedom.<sup>165</sup>

The term “Wahhabi” has also been used by Daghestani and federal officials to describe not only various conservative Islamist movements whom the authorities find objectionable, but also Muslim groups that are not registered or refuse to acknowledge the supremacy of the traditional Muslim leadership.<sup>166</sup>

Self-described Wahhabis have made inroads in Daghestan in recent years, and in 1988 several towns in the Bouynaksk region unilaterally imposed Islamic law. Russian forces later overran the “Wahhabis” and retook the towns in September 1999. Following the Chechen incursion in Daghestan in early August 1999, government authorities took further steps to restrict Wahhabi activities in Daghestan. In September, the Daghestani legislature passed a law outlawing the Wahhabi movement and other “extremist” groups.<sup>167</sup> Furthermore, there are reports that in various areas of Daghestan, government and traditional religious authorities have destroyed mosques, blocked broadcasts, attacked villages, and harassed members of communities associated with these conservative Islamic movements.<sup>168</sup>

#### ***b. Jews and anti-Semitism***

The *1999 Country Reports* and *1999 Religion Reports* recount numerous recent incidents of anti-Semitic statements by Communist Party Duma members and regional government officials, as well as serious acts of violence and intimidation targeting Jews.<sup>169</sup> The reports also describe some of the actions taken by then-President Yeltsin and the federal government to oppose the use of anti-Semitic rhetoric in political

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<sup>165</sup> Fagan and Uzzell, “Church-State Relations in Russia: What’s Next?”

<sup>166</sup> See *1999 Religion Reports*, “Russia,” 300.

<sup>167</sup> *1999 Country Reports*, “Russia.”

<sup>168</sup> Ibid.

<sup>169</sup> See *1999 Country Reports*, “Russia”; *1999 Religion Reports*, “Russia,” 300-04. See also Anti-Defamation League, “Reemergence of Political Anti-Semitism,” ; Union of Councils For Soviet Jews, *Antisemitism, Xenophobia and Religious Persecution*.

discourse and more generally to enact legal protections against extremism and incitement to violence. These include a 1998 Duma resolution denouncing public statements damaging inter-ethnic relations, a proposed law on combating political and national extremism, another proposed law prohibiting Nazi symbols and literature, and demands by federal officials that anti-Semitic incidents be fully investigated at the local level and criminal prosecutions brought.<sup>170</sup> Regional and local governments, with few exceptions, do not take similar steps.<sup>171</sup>

Recent public opinion surveys report that anti-Semitic views are held by substantial numbers of Russians. For example, a 1999 poll released by the Anti-Defamation League of over 1,500 Russians found that 44 percent held strong anti-Semitic views, such as that Jews in Russia exercise too much power and are ready to use “unscrupulous means” to achieve their aims.<sup>172</sup> A poll of Muscovites released in 1998 found that 34 percent supported limits on the number of Jews in high-ranking official posts, and 64 percent said they would not want a Jewish president.<sup>173</sup> In other recent polls, however, large majorities of Russians surveyed stated that the anti-Semitic statements of Communist Party Duma members were “unacceptable,” and that pro-Nazi organizations and their publications should be banned.<sup>174</sup>

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<sup>170</sup> 1999 *Religion Reports*, “Russia,” 301-02. The Duma resolution denouncing intolerant statements did not make specific reference to Jews or anti-Semitism. Anti-Defamation League, “Reemergence of Political Anti-Semitism.”

<sup>171</sup> “No to Religious Extremism,” *Moskovskaia pravda*, December 15, 1999.

<sup>172</sup> Anti-Defamation League, “ADL Poll Shows 44 Percent of Russians Hold Strong Anti-Semitic Views as Political and Popular Acts of Anti-Semitism Rise,” September 21, 1999 ([http://www.adl.org/Pres/Rele/ASInt\\_13/3469\\_3.html](http://www.adl.org/Pres/Rele/ASInt_13/3469_3.html) accessed 4/4/00). This poll was conducted in Russian by a Moscow-based public opinion research firm and was reported to have a sampling error of 3 percentage points. The poll findings also showed that anti-Semitic views are evenly spread throughout the population, but are consistently higher among Communist Party supporters.

<sup>173</sup> Will Englund, “Uproar Over Remarks Suggest Many Blame Jews For Misfortunes,” *Baltimore Sun*, November 16, 1998 (<http://www.stetson.edu/~psteeves/relnews/9811a.html> accessed April 19, 2000).

<sup>174</sup> Celestine Bohlen, “Swastikas in Russia: Anti-Semitism Surges,” *New York Times*, March 2, 1999; Interfax, February 26, 2000 (<http://www.stetson.edu/~psteeves/relnews/9903a.html> accessed April 10, 2000).

The redefinition of Russian national identity following the fall of communism is, along with economic and political turmoil, an influential factor that contributes to current Russian anti-Semitism.<sup>175</sup> In some cases, this definition has developed along narrow “Russian” ethnic lines that excludes Jews from the recognized mainstream.<sup>176</sup> Nationalist identities also developed based on cultural and behavioral stereotypes that exclude those who think, act, or live differently from “Russians.”<sup>177</sup> Excluding Jews from mainstream Russian identity leaves them open to intolerance and defines them as “outsiders” or “external agents” that can be blamed for Russia’s ills. Some Russians attribute the country’s serious social and economic problems to an “external enemy,” in many cases Jews (both Russian and foreign Jews).<sup>178</sup>

In Russia today, Jewish identity is largely ethnic and cultural, and explicitly religious factors play a less important role in influencing anti-Semitism in Russia.<sup>179</sup> Nevertheless, some Russian Orthodox leaders and clerics employ anti-Semitic rhetoric, and Orthodox religious teachings can contribute to negative attitudes towards Jews.<sup>180</sup>

## 2. Nationalism and Orthodoxy

There are two interrelated sets of societal attitudes related to Russian nationalism and the Russian Orthodox Church that affect the status of indigenous and foreign minority religions: first, Russian nationalism and the rejection of foreign ideas,

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<sup>175</sup> Anti-Defamation League, “Reemergence of Political Anti-Semitism,” ; Anti-Defamation League, “ADL Poll.”

<sup>176</sup> See, e.g., Anti-Defamation League, “Reemergence of Political Anti-Semitism,” (reporting the views of Russian Human Rights Commissioner Oleg Mironov and Krasnodar Governor Nikolai Kondrantenko).

<sup>177</sup> Celestine Bohlen, “Swastikas in Russia: Anti-Semitism Surges,” *New York Times*, March 2, 1999.

<sup>178</sup> See Anti-Defamation League, “Reemergence of Political Anti-Semitism,” Dimitry V. Pospelovsky, *Some Observations on Russian Self-Awareness and the Orthodox Church in the Era of Gorbachev* (1989), 9.

<sup>179</sup> See Yuriy Tabak, “Relations Between Russian Orthodoxy and Judaism,” Witte and Bourdeaux ed., *Proselytism and Orthodoxy in Russia* (1999), 149.

<sup>180</sup> Tabak, “Russian Orthodoxy and Judaism,” 146-50.

and second, a distrust of religious innovation that is seen to challenge the symbolic primacy of the Russian Orthodox Church (or, in some circumstances, other “traditional” Russian religions).

*Nationalism and rejection of “foreign” ideas.* Nationalism has a strong current in Russian society.<sup>181</sup> Many Russians subscribe to statements such as “Russia is for Russians.”<sup>182</sup> A number of political figures from the Russian Communist Party to smaller groups such as the neo-Nazi group Russian National Unity espouse strongly nationalist platforms and programs. Although some nationalists are extremist, nationalism in Russia – like the nationalism of many other countries – exists among a wide range of people.<sup>183</sup>

Many Russians are opposed to the encroachment of Western ideas, a Western market-based economy, and Western institutions on what is generally perceived to be “Russian” territory.<sup>184</sup> This opposition to Western influence figures prominently in current manifestations of Russian nationalism. They seek to unify Russia through a specifically Russian “identity” and support and rebuild “traditional” Russian institutions as the military and centralized political and economic systems. In the religious sphere, Russian nationalist sensibilities support a privileged position for the Russian Orthodox Church, an increase in the influence of the Church in social affairs, and containment of

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<sup>181</sup> Liah Greenfeld, *Nationalism: Five Roads to Modernity* (1992), 189-275; Robert Service, “Zhirinovskii: Ideas in Search of Audience” in G. Hosking and R. Service, eds., *Russian Nationalism: Past and Present* (1998), 180. See also Alexander Rudakov, “Religioznye Portrety Rossiyskikh Konservatorov,” *NG-Religii*, 19 July, 1998.

<sup>182</sup> See Celestine Bohen, “Swastikas in Russian Anti-Semitism,” *New York Times*, March 2, 1999 (43 percent of Russians surveyed agree with this slogan).

<sup>183</sup> The Anti-Defamation League reported in 1999 that 80 “nationalist” political parties and organizations exist in Russia that disseminate over 150 periodicals to the Russian-speaking population throughout the former Soviet Union. See ADL, “Reemergence of Political Anti-Semitism.” The criterion used to determine “nationalist” was not reported.

<sup>184</sup> See, e.g., Michail Mchedlov, “Skhodstvo i razlichie sotsialno-samochnuvstviyai i politicheskikh orientaziy veruyushchikh i neveruyushchikh,” *NG-Religii*, July 24, 1997.

the activities of “foreign” religious elements, particularly Western missionaries.<sup>185</sup>

The Russian government has recently articulated a national security interest in protecting the spiritual and moral development of the population from “foreign” influences. In a recently promulgated “National Security Blueprint (*Kontseptsiya*),” one of the measures necessary to ensure Russian national security is stated as follows:

Assurance of the Russian Federation’s national security also includes protecting the cultural and spiritual-moral legacy and the historical traditions and standards of public life, and preserving the cultural heritage of all Russia’s peoples. There must be a state policy to maintain the population’s spiritual and moral welfare . . . and counter the adverse impact of foreign religious organizations and missionaries.<sup>186</sup>

After the collapse of the Soviet Union, many Russians reacted negatively to signs of increasing American influence in television, movies, magazines, and business. For some Russians, the United States is perceived not as a benign promoter of human rights, but as a self-interested country determined to expand its political and economic influence at Russia’s expense. The United States, they believe, pursues its own interests by promoting American businesses, American media, and American religious groups, as well as Russian reformist politicians and human rights activists that support those

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<sup>185</sup> For example, in Belgorod, an Orthodox priest stated that Catholics are opposed to the national rebirth of Russia, and Catholic organizations should not be registered because they represent “a harmful Western influence.” He also thought that the visit of Pope John Paul II to Georgia in November 1999 was related to the Roman Catholic Church’s assistance to the Chechen rebels. See Roman Lunkin, “Russia: State Officials and Orthodox Oppose Catholics in Belgorod,” *Keston News Service*, March 3, 2000. See also “Nationalism, Anti-West Sentiment Threatens Religious Freedom in Russia,” Newsroom, January 7, 2000 (<http://www.stetson.edu/~psteeves/relnews/0001a.html> accessed April 27, 2000).

<sup>186</sup> “Russia’s National Security Concept,” *Nezavisimkoye Voennoye Obozreniye*, January 14, 2000 (in FBIS January 20, 2000).

interests.<sup>187</sup> American missionaries are often seen as agents of U.S. interests.<sup>188</sup>

When the United States attempts to promote religious freedom in Russia it should be very careful to be perceived principally as promoting the rights of Russians – not primarily the rights of foreigners. Well-intended proposals made in the United States – whether by the President, the State Department, or by Members of Congress – might be counterproductive if they are made without understanding how such recommendations will be perceived and acted upon in Russia.

The U.S. government has pressured the Russian government in specific ways to safeguard religious freedom in Russia. Following the adoption of the 1997 Religion Law, the U.S. Congress enacted legislation as part of its foreign assistance appropriation to prohibit U.S. foreign aid to Russia if the 1997 Religion Law were implemented to discriminate against minority religious faiths.<sup>189</sup> This provision – commonly known as the Smith Amendment (after its main proponent, Sen. Gordon Smith of Oregon) – has been reenacted in the appropriations in fiscal years 1999 and 2000.<sup>190</sup>

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<sup>187</sup> Sergey Dunaev, “God nazad Rossii udalos zashchitit svoi suverenitet v voprosakh dukhovno razvitiya,” *NG-Religii*, July 19, 1998.

<sup>188</sup> See, e.g., Viktor Kalinin, “Dostoinstvo pri nedostatках,” *NG-Religii*, April 15, 1998.

<sup>189</sup> This legislation prohibits foreign assistance to the government of Russia unless the President determines that “the Government of the Russian Federation has implemented no statute, executive order, regulation or similar government action that would discriminate, or would have as its principal effect discrimination, against religious groups or religious communities in the Russian Federation in violation of accepted international agreements on human rights and religious freedoms to which the Russian Federation is a party.” Section 577(a) of P.L. 105-118 (November 26, 1997).

<sup>190</sup> Section 572 of P.L. 105-277 (October 19, 1998); Section 567 of P.L. 106-113 (November 29, 1999).

In June 1998 and April 1999, respectively, the President and Secretary of State Albright determined that the Russian government implemented the 1997 Religion Law in a manner that is not in conflict with its international obligations on religious freedom. See “Presidential Determination No. 98-23 of May 23, 1998,” reprinted in *Fed. Reg.* 63 (1998): 30365; Madeleine Albright, Secretary of State, “Determination Pursuant to Section 572 of the Foreign Operations, Export Financing and Related Programs

Proponents of the Smith Amendment in the United States believe that it has successfully pressure the Russian federal authorities to mitigate the more restrictive and prejudicial consequences of the 1997 Religion Law.<sup>191</sup> Some Russian human rights activists have also embraced the Smith Amendment's approach of using economic pressure to change the actions of Russian officials. One activist stated: "The only measure that can make Russian bureaucrats respect human rights is the threat of cutting off Western economic support."<sup>192</sup>

In Russia, however, the Smith Amendment is sometimes perceived as improper foreign interference with Russia's internal affairs.<sup>193</sup> It is viewed as an example of the United States taking advantage of Russia's political and economic weakness, rather than promoting democracy, human rights or religious freedom.<sup>194</sup> Moreover, U.S. foreign policy is thought to support the "Westernized" elements of Russian society (including

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Appropriations Act, 1999," April 15, 1999. The Memorandum of Justification accompanying the Secretary of State's 1999 decision stated: "To the extent that restrictions on the rights of religious minorities have occurred, they have been the consequence of actions taken by regional or local officials and do not appear to be a manifestation of federal government policy." Memorandum of Justification Regarding Determination Pursuant to Section 572 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999 (Public Law 105-277). In light of this, Secretary Albright stated that the application of the 1997 Religion Law "requires continued and close monitoring" because the law "furnishes regional officials with an instrument that has been interpreted and used by officials at the local level to restrict the activities of religious minorities." Ibid.

<sup>191</sup> The Smith Amendment was originally proposed after religious legislation had been passed by the Duma but before President Yeltsin had signed the 1997 Religion Law into law. Its intended effect was to encourage President Yeltsin to veto the bill, although some consider that the congressional debate on the Smith Amendment may have made it more difficult for him to do so. See *Congressional Record -- Senate*, S7518, January 16, 1997 (statement of Senator Smith).

<sup>192</sup> *Russkaya Mysl*, January 22-28, 1998 (Commission staff translation).

<sup>193</sup> See e.g., *Russkaya Mysl*, January 22-28, 1998, 14 (statement by Vladimir Lukin, a member of the Russian Duma).

<sup>194</sup> *Rus Pravoslavnya*, no. 62, January 6, 1998.



the liberalized intelligentsia and domestic human rights defenders) and seek to contain the growth of societal movements – including the predominance of the Russian Orthodox Church – that are perceived as detrimental to U.S. interests.<sup>195</sup> According to this view, a strong, countervailing response by Russia against American pressure is required in order to maintain control over its political and economic development.<sup>196</sup>

*Partiality to the Russian Orthodox Church.* Many Russians, including some who are not religious believers, see the Russian Orthodox Church as fulfilling a central symbolic role in Russian history and culture. A substantial percentage of Russians believe that the Russian Orthodox Church, or the “traditional” religions of Russia should have a privileged position in Russian law.<sup>197</sup> Almost 60 percent of Russians consider the Russian Orthodox Church to be a trustworthy institution (only the army is considered by more to be trustworthy).<sup>198</sup> A number of observers assert that the growth of the Russian Orthodox Church has changed the cultural landscape of post-Soviet Russia by giving Russians who identify themselves as Orthodox a sense of national purpose, spiritual vitality and commitment to common ideals.<sup>199</sup> On the other hand, a

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<sup>195</sup> *Rus Pravoslavnya*, no. 62, January 6, 1998.

<sup>196</sup> *NG-Religii*, April 15, 1998.

<sup>197</sup> In one poll, 27 percent of those polled agreed that the Russian Orthodox Church should be granted a privileged position in the Russian state. See Alexander Morozov, “Tserkvi v zerkale ukhodyashchevo goda,” *NG-Religii*, 12, 1997. In another poll conducted in 1997, 11 percent of youths between the ages of 17 and 26 and 16 percent of adults between 40 and 60 stated that Orthodoxy should be the State religion, and 23 percent and 28 percent of those groups, respectively, stated that preference should be given to traditional religions and the activities of new religious groups should be restricted. Forty percent of both groups believed that all religions should be equal before the law. Russian Independent Institute for Social and National Problems, “Religiousness of Russian Youth,” (no date, posted December 14, 1998) (<http://www.stetson.edu/~psteeves/relnews/9812b.html> accessed April 29, 2000).

<sup>198</sup> “Experts Predict Putin Presidency Will Support Orthodoxy,” *Newsroom*, April 3, 2000 (<http://www.stetson.edu/~psteeves/relnews/0004a.html> accessed April 29, 2000).

<sup>199</sup> See Pospelovsky “Russian Orthodox Church,” 41-45, 61-66; Valliere, “Russian Orthodoxy and Human Rights,” 297-99; Berman, “Religious Rights in Russia,” 300- 304. See also “Religiosnoie Vozroshdenie: Illusia ili Real’nost?,” *NG - Religii*, November 12, 1997.

significant section of the population, including atheists and intellectuals, maintains a negative view of the Church and its officials.<sup>200</sup>

Non-Russian Orthodox religions can be seen as threatening to the perceived cultural and symbolic unity of Russia, whether they be ethnically- and religiously based (Muslims and Jews), or foreign-originated (Catholics, Western Protestants, Jehovah's Witnesses, or Hare Krishnas). As noted earlier in this memorandum, officials targeted a number of foreign and unfamiliar religious groups with legal actions to liquidate their communities on the basis of a perceived detrimental impact on Russian society. The terms "sect" and "cult" are commonly used in the Russian media to disparage the religious group so identified, as are reports of immoral or illegal behavior.<sup>201</sup>

After the collapse of the Soviet Union, many Russians watched with mixed feelings as unfamiliar or long-suppressed religious movements became active in public life and as thousands of missionaries from the United States and other Western countries "invaded" Russia in pursuit of converts.<sup>202</sup> The arrival of missionaries has, in some cases, increased tensions between Muslim and Christian groups in those regions where Muslims and Orthodox Christians live in close proximity.<sup>203</sup> Actions by some

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<sup>200</sup> See e.g. "Survey Finds Religious Beliefs Re-emerging in Russian Youth," Associated Press, April 8, 2000 (30 percent of Russians surveyed in 1998 that were born after 1970 express confidence in religious leaders, down from 74 percent in 1991). Polls show that many Russians are not in favor of a political role for religious organizations. See, e.g., "Religion in Our Life," What the Papers Say, March 21, 2000 (61 percent of Russians surveyed believe that religious organizations should not intervene in state affairs), available in LEXIS, News Library, News Group File.

<sup>201</sup> See e.g. Nikolay Trofimchuk, "Chevo dobivayutsya bortsy c sectami?," *Religia i Pravo*, (no. 6 1999), 20-21; See "Petersburg Court Recognizes Jehovah's Witnesses as 'Sect,'" *ITAR-TASS*, February 28, 2000 (<http://www.stetson.edu/~psteeves/relnews/0003a.html> accessed April 26, 2000); Ekaterina Stupina, "Priests Have Entered the State Duma," *NG - Religii*, October 27, 1999 (<http://www.stetson.edu/~psteeves/relnews/9910a.html> accessed April 29, 2000); Alexis Markevich, "Who Are the Witches?," *Russkaya Mysl*, January 27, 1998 (<http://www.stetson.edu/~psteeves/relnews/9802a.html> accessed April 29, 2000).

<sup>202</sup> One study estimated the foreign missionary force in the former Soviet Union as rising from 311 in 1989 to approximately 5,000 in 1997. See Elliot and Deyneka, "Protestant Missionaries," 364-66.

<sup>203</sup> Conversation between Commission staff and The Very Reverend Leonid

missionaries are perceived to exhibit cultural arrogance, insensitivity, unprincipled behavior and religious intolerance.<sup>204</sup> Some Russians point to egregious incidents to explain and, to some extent justify, intolerance and opposition towards foreign groups.<sup>205</sup> Missionary groups and others working in Russia have identified such abuses and have sought to establish codes of conduct to guide missionary behavior.<sup>206</sup>

Russian Orthodox leaders have made public statements criticizing the activities of unfamiliar and foreign religious groups and calling for government action.<sup>207</sup> Church officials, including the Patriarch, have met with national and regional government officials to urge them to adopt restrictions on such religious groups.<sup>208</sup> As noted above, the Church was deeply involved in the adoption of the 1997 Religion Law.<sup>209</sup>

Russian authorities also view the growth of unfamiliar and foreign religions as undermining national unity. Alexander Chuyev, the assistant chairman of the Duma's religion committee, stated that "religious revival in Russia can only be achieved by uniting around our own religions . . . . We cannot unite people around Aum Shinrikyo but only around Orthodoxy -- Russians and Ukrainians, that is -- while the Muslim

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Kishkovsky; Pospelovsky, "Russian Orthodox Church," 73.

<sup>204</sup> See Lawrence A. Uzzell, "Guidelines for American Missionaries in Russia," in Witte and Bourdeaux, eds., *Proselytism and Orthodoxy in Russia*, 323-30; Anita Deyneka, "Guidelines for Foreign Missionaries in the Former Soviet Union," in Witte and Bourdeaux, *Proselytism and Orthodoxy in Russia*, 332; Elliot and Deynaka, "Protestant Missionaries," 374.

<sup>205</sup> Deyneka, "Guidelines for Foreign Missionaries," 332.

<sup>206</sup> *Ibid.*, 332-37.

<sup>207</sup> Foreign groups have made similar attacks on the Russian Orthodox Church. See, e.g., Elliot and Deyneka, "Protestant Missionaries," 374.

<sup>208</sup> See, e.g., Homer and Uzzell, "Provincial Religious Freedom Laws," 263.

<sup>209</sup> See Krasikov, "Church-State Relations in Russia," 77-83. Patriarch Alexii II, as well as leaders of official Muslim and Buddhist institutions, criticized then-President Yeltsin for his July 1997 veto. "Patriarch Warns of Civil Tension Over Religion Law Veto," *Itar-Tass*, July 24, 1997.

regions can unite around Islam.’<sup>210</sup> Thus, the natural sympathies of some Russians and Russian officials are not with the rights of new religious communities and foreign missionaries to express their religious beliefs, but the right of Russians to preserve their culture from encroachment by “foreign” religious operatives.<sup>211</sup> As noted above, the recent Russian national security program has explicitly linked a security interest in spiritual and moral welfare of the population and the “adverse impact of foreign religious organizations and missionaries.”<sup>212</sup>

### 3. Suspicion of the Law and Human Rights

Many Russians have a deeply rooted suspicion of the rule of law and the use of law as a means to protect human rights. These attitudes impede the development of human rights and religious freedom in Russia. For historical reasons, Russians do not believe that laws and the judicial system exist to protect people from interference with the exercise of their rights. Laws, including the Russian Constitution and international human rights norms, are not generally understood to be standards to which people and governments should adhere, but as a tool to be used against citizens or as rhetorical phrases employed for their propaganda value.<sup>213</sup> Similarly, it is not common for

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<sup>210</sup> Geraldine Fagan, “Who Will Fight for Religious Freedom in Russia’s New Duma?,” *Keston News Service*, January 24, 2000.

<sup>211</sup> For example, Alexander Chuyev stated that a distinction should be made between religious organizations that are traditionally Russian and those that are of foreign origin: “If they are our religious organizations, we can deal with them using our legislation, but if they’re foreign and dangerous we must do everything we can to prevent them from getting in.” Chuyev’s readiness to equate “foreign” with “dangerous” strikes a chord with many in Russia. Chuyev identified Scientologists and the Unification Church as religious groups that “could be dangerous” for Russia. In his view, centralized religious organizations, such as Catholicism, do not pose such a threat to Russia because, in contrast to non-traditional religions, they had “their own cultural or national addresses in Russia.” Non-traditional religions produce “violent disorientation” of those attracted to them and transform these people “from socially passive to socially dangerous.” An appropriate way to combat such groups, according to Chuyev, is to subject them to scrutiny by special commissions and expert examination and to make them undergo a “test period” before allowing them to function freely. *Ibid.*

<sup>212</sup> See text accompanying note 187.

<sup>213</sup> Shara Abraham, “The Perpetuation of Legal Nihilism and the Assertion of

Russians to assume that a court is an institution designed to provide an effective remedy for the infringement of rights, but that it is one of many bureaucratic mechanisms designed by the politically powerful to impose their will on others.

When Russians think of rights, they typically think of social and economic rights, including the right to economic security, education, employment, housing, and health care, rather than the rights to freedom of speech, the press, or religion.<sup>214</sup> According to one Russian scholar, Russians are relatively more inclined to follow the direction of the state rather than strive to enhance an individual's right to differ from the norm.<sup>215</sup> They expect the state to protect their interests "from above" and guarantee the protection of their collective rights and freedoms rather than believe that rights are inalienable and based on individual human dignity.<sup>216</sup>

Nihilistic attitudes toward law and human rights in Russia may be seen as a legacy of two historical sources. First, Soviet society was not governed by law and an important purpose of Soviet law was to train and educate citizens in Soviet moral and social values.<sup>217</sup> In other words, law in the Soviet system was another tool of ideological persuasion. Second, the Orthodox Christian tradition generally emphasizes

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Personal Freedoms in a Post-Soviet World," *Human Rights Brief* 7, (winter 2000): 17-18.

<sup>214</sup> An opinion poll released in 1999 by the All-Russian Center for the Study of Public Opinion ranked the rights most important to Russians, including the rights to free education (68 percent), medical care (68 percent), financial support in old age (68 percent), a well-paid job (53 percent), privacy (46 percent), freedom of speech (14 percent), freedom of worship (8 percent). See Paul Globe, "Russia: Analysis From Washington – Entitlements, Rights and Democracy," *RFE/RL*, October 1, 1999 (<http://www.rferl.org/nca/features/1999/10/f.ru.991001121734.html> accessed April 12, 2000).

<sup>217</sup> See Abraham, "Legal Nihilism," 17-18 (reporting speech by Boris Topornin, a Russian legal scholar and president of Institute of State and Law, Moscow).

<sup>216</sup> Globe, "Entitlements, Rights and Democracy."

<sup>217</sup> Harold J. Berman, *Faith and Order: The Reconciliation of Law and Religion* (1993), 369-70.

the primacy of “grace” over “the law” and is typically more concerned with sacramental and corporate salvation rather than with an individual’s relations with God.<sup>218</sup> Thus, in one scholar’s view, Orthodoxy does not support the development of individualism on religious grounds.<sup>219</sup> It tends to encourage collective values and discourage individuals from viewing themselves as rights-bearers over against community.<sup>220</sup>

#### **D. Conclusion**

Religious freedom in Russia is at a crossroads, and its future direction will depend on at least three factors. First, it remains to be seen what regional and local officials will do to unregistered religious groups after the December 31, 2000 deadline. The critical player is President Putin; will he rein in local officials in problem regions? Second is the Chechnya factor. Will anti-Muslim rhetoric and the iron-fisted approach to Chechen separatists – having played so well for presidential candidate Putin – be increasingly employed elsewhere against Muslims? Will Russian human rights violations in Chechnya galvanize Central Asian Muslims around their Islamic identity? Third, Russian antagonism toward non-Orthodox movements, especially those lead by foreign missionaries, could create grass roots support for discriminatory liquidation of disfavored religious minorities.

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<sup>218</sup> Valliere, “Russian Orthodoxy and Human Rights,” 280-81.

<sup>219</sup> On the development of Russian legal consciousness, see Andrej Walicki, *Legal Philosophies of Russian Liberalism* (1992).

<sup>220</sup> Valliere, “Russian Orthodoxy and Human Rights,” 280-81.